



Harris, J. M., Cowan, D., & Marsh, A. D. (2020). *Improving Compliance with Private Rented Sector Legislation: Local Authority Regulation and Enforcement*.

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UK COLLABORATIVE
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Improving compliance with private rented sector legislation

Local authority regulation and enforcement

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5 August 2020

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Acknowledgements

This is the second project carried out as part of the collaboration between CaCHE, The Dispute Service (TDS) Charitable Foundation and the SafeDeposits Scotland Charitable Trust. Through this collaboration we are undertaking a diverse programme of research on issues relating to developments in, and operation of, the UK private rented sector. The broad objective of the programme is to contribute to raising standards in the UK private rented sector.

This research would not have been possible without the staff and individuals who participated in the field work (who cannot be named due to anonymity). We would like to thank the staff from the 13 participating local authorities for facilitating our case study visits and giving their time to speak to us in the interviews. Thank you also to the key stakeholders who took part in a telephone interview. Finally, thank you to the steering group members for their insights and feedback throughout the course of this project and advisory group members for their feedback on this report.



SafeDeposits Scotland
Charitable Trust

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Key messages

- This research examines how local authority enforcement and regulation in the UK private rented sector (PRS) could be improved. The findings are based on 70 in-depth interviews with key stakeholders and professionals from 13 UK local authorities.
- Much thinking about regulation and research on enforcement in the PRS focuses on deterrence – using formal processes to control bad behaviour. It fails to account for the wide range of other tools and approaches that can be effective in achieving compliance.
- Local authority strategies and approaches to regulating the sector are shaped on a local level. There are at least four types of approaches operating in the sector:
 - **Light-touch approaches:** focusing mainly on reactive informal activity with limited use of formal powers. Proactive compliance-focused activities such as advice or training are generally not provided.
 - **Hard-line approaches:** focusing on formal activity and punishing non-compliant landlords. These councils have high rates of prosecution and other formal action. There is officially no informal approach and limited compliance-focused activities are provided.
 - **Compliance-focused approaches:** that focus primarily on collaboration but are willing to escalate the response to formal activity if necessary. A range of compliance-focused activities are provided as part of the strategic approach.
 - **Creative approaches:** that focus not only on enforcement but on alternative regulatory techniques which aim to also address tenant vulnerability, poverty and homelessness. Such holistic approaches are based on strong partnership working and integrated service delivery.
- Local authority strategies are shaped by resource availability, the level of political support locally, leadership, how the problem is understood and defined, geographical factors, the way in which teams are organised and configured and how the local authority views itself in relation to the PRS.
- Our findings indicate there are significant limitations and challenges associated with relying either on light-touch or hard-line strategies. Regulation in the sector is more likely to be effective when local authorities aim to find a balance between the two approaches.
- Some local authorities are adopting the principles of responsive regulation as a means of combining deterrence and compliance-focused approaches. However, this is only occasionally adopted at a strategic level which can lead to inconsistency in the application of the law.
- The sector needs to re-think the way in which outcomes and impacts are understood. The number of prosecutions or other formal activity are not appropriate measures of success. The aim of regulation within this context is to improve standards by achieving compliance.
- A positive way forward is not only to consider the application of formal penalties but to take into account broader regulatory techniques. This includes aims and purpose (does the adopted understanding of the problem capture all relevant dimensions?), holistic thinking and multi-agency working (what is the role of other organisations within this process?), internal design (how are PRS teams are configured? Do they work collaboratively?), and how outcomes are defined and measured.

- Across the UK, there is a need for an effective and responsive database that evolves in real time and consequently allows local authorities to understand the sector and the way in which it is changing. In England, a national system of registration should be introduced.
- Our findings illustrate an exclusive focus on formal enforcement overlooks some of the most important work of local authorities. Certain characteristics of the UK PRS indicate that less interventionist measures will often be preferable.
- The following key principles and approaches may facilitate the effective use of compliance-focused activities.
 - Aiming for a balance between deterrence and compliance-focused approaches.
 - Designing and delivering compliance-focused activities at a sector wide and strategic level.
 - Making decisions on the specific blend of enforcement approaches which are appropriate to the local context based on data and evidence.
 - Adopting more nuance in the language of non-compliance. Policy discussions which suggest a binary between the majority of responsible landlords and those that are “criminal” or “rogue” are unhelpful.
 - Providing adequate funding to ensure councils can adopt appropriate and effective responses to the changing nature and context of the PRS.
 - Consider prevention and the role of local authorities in encouraging adherence to standards.
- The regulatory efforts of local authorities in the PRS are seriously undermined by the low fines and other sentences issued by the courts. Clear sentencing guidance is required.
- Local authorities should adopt a tenant-focused approach which focuses on addressing the advice and support needs of vulnerable renters, for example, through effective signposting or referral processes.

Executive summary

Introduction

Poor property conditions and variable standards of housing management in the private rented sector (PRS) are among the most important housing issues facing the UK today. In response to these challenges, regulation of the UK PRS has been significantly restructured over the last fifteen years.¹ Regulatory policy is changing at different speeds in each of the four jurisdictions, and across the UK local authorities now have a broader range of powers to improve standards and affect landlord behaviour.

Local authorities however currently face the challenge of meeting increased demand for their services with diminishing resources. Across the UK there are widespread criticisms regarding the inadequacy of current enforcement activities. There is currently a lack of research exploring how various PRS strategies and approaches are shaped on a local level.

In this context, our **research aim** was:

- To investigate how UK local authorities are developing strategies to improve their PRS, and to provide suggestions for how regulation and enforcement in the sector could be improved.

The more specific **research questions** we addressed were:

- How are local authorities enforcing the law aimed at tackling low standards in the UK PRS?
- What PRS strategies are local authorities adopting and how do they combine formal and informal approaches?
- What can other local authorities learn from the system and approaches adopted that can be used to help shape decisions on regulating the PRS?

These research questions were addressed in two stages. Stage 1 involved seven semi-structured telephone interviews with key stakeholder professional participants from national tenant groups and landlord groups and two interviews with participants working within Rent Smart Wales. Stage two of the research involved in-depth interviews with 61 professionals from across 13 UK local authorities. The sample included a wide range of individuals working at a managerial and strategical level and those responsible for enforcing the legislation “on the ground”. Analysis included consideration of written enforcement strategies and related documentation (where available).

Setting the context: different approaches to regulation

Understanding what drives landlords to comply with rules is fundamental to developing effective regulation. Similarly, the motivations and behaviours of tenants, local authorities – housing and trading standards officials - will shape compliance. In the UK PRS there is currently little systematic research on issues of motivations in which to ground policy assumptions and responses. Why do landlords comply, or not, with the law? How and why do enforcement agencies select their approach to enforcement?

There is a literature on regulation and compliance which offers a more comprehensive approach to thinking about how to improve compliance and therefore standards in the PRS.

¹ For an overview of these regulatory changes see A. Marsh, K. Gibb (2019) *The private rented sector in the UK: An overview of the policy and regulatory landscape* (Accessed: 15/4/20).

The different approaches to regulation are:

1. **Command-and-control or deterrence-focused:** Much regulatory activity adopts a deterrence-focused approach which involves setting rules, monitoring adherence to those rules and applying sanctions where appropriate. This approach has been subject to sustained criticism, partly because it does not capture the varied activities of officers on the frontline.
2. **Responsive regulation:** This offers an alternative approach. It is based upon the idea of a 'pyramid of enforcement' (Figure 1). The presumption is that most regulatory responses start at the base of the pyramid (involving more informal actions) and will rise up the pyramid (to more formal activities) if compliance is not forthcoming. Much regulatory activity in the PRS can be seen as adding new and higher tiers to the regulatory pyramid.

Figure 1: Pyramid of Enforcement



3. **De-centred regulation:** This embraces processes of self-regulation and the activities of actors (other than the state) who may play a role in regulating the sector. Critics complain that self-regulation is not as effective as regulation by public authorities. This approach however enables us to consider a broader range of mechanisms through which behaviour change in the sector might be achieved.
4. **Risk-based regulation:** This includes focusing resources on particular areas of concern. Focusing entirely on "high risk" can lead to an increase of risk in "low risk" parts of the sector. Mixed strategies – such as accompanying targeting of high risks with unpredictable random inspections on low risk subsectors – may be necessary to keep risks low.

The UK picture: law and policy

There have been significant shifts in the regulation of the PRS across the devolved governments. There has been some convergence over issues such as licensing of houses in multiple occupation, and local government being the sector regulator. But there has been considerable divergence over issues such as licensing of landlords and properties, and registration of landlords.²

Housing law and the regulation of standards

England: After a long period of deregulation, in recent years there has been considerable re-regulation of the landlord and tenant relationship. New statutory provisions regulate various documents and certificates that must now be provided to a tenant. There is a new condition that the property is fit for human habitation. The Tenant Fees Act 2019 restricts the fees and amount of tenancy deposit that can be levied. New enforcement powers have been granted to local authorities under the Housing and Planning Act 2016 (including the ability to apply civil penalties for certain offences). The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 requires all residential tenancies to have a rating of at least “E”.

Wales: Although the provisions of the Housing Act 2004 in England apply equally to Wales, the enforcement regimes are different. For example, the civil penalty regime does not apply as this was introduced by the Housing and Planning Act 2016. The Energy Efficiency Regulations also apply in Wales because they relate to matters not devolved to the Welsh Government. The major intervention by the Welsh Government has been the requirement for all landlords in Wales to be registered, and landlords and lettings agents must be licensed for that purpose. Rent Smart Wales is responsible for processing registrations, issuing licenses and enforcement. The other major intervention has been the Renting Homes (Wales) Act 2016. However, that Act is not yet in force in Wales.

Scotland: The Private Housing (Tenancies)(Scotland) Act 2016 introduced the private residential tenancy, which is an open-ended tenancy. Since 2004, all landlords must be registered which requires that they be a fit and proper person. Local authorities are responsible for the administration and enforcement of the scheme. After 1st April 2020, the E+ rating has been required on all newly rented properties.³

Northern-Ireland: There is a mandatory registration scheme for landlords in Northern Ireland, the purpose of which is to be “light touch” to enable communication and better regulation of the sector.⁴ Accordingly, there is no fit and proper person requirement. Private Tenancies (NI) Order 2006 enabled protection of tenancy deposits; enacted when regulations introduced in 2012 required protection of deposits within approved Tenancy Deposit Schemes from 2013. Before the Northern Ireland Assembly was dissolved, a range of further interventions in the PRS were being discussed, with comparisons being made between developments made by the other devolved governments and Northern Ireland.

Policy Issues

Registration and licensing:

- Landlord registration can be used as a device to monitor growth and decline in the sector and provide information to landlords. However, there are data gaps across the devolved governments between the number of landlords operating in the sector and those held on the database.
- The amount and level of information distributed to landlords varies across schemes and between different local authorities.

² T. Moore (2017), “The convergence, divergence and changing geography of regulation in the UK’s private rented sector”, *International Journal of Housing Policy*, 17(3): 444-56.

³ This requirement has been suspended until the Covid-19 crisis has come to an end.

⁴ Department for Social Development (2010), *Building Solid Foundations*, Belfast: DSD.

- There are issues around data sharing. In Northern Ireland these restrictions significantly impact on local authorities' ability to use the data to understand the sector, communicate with landlords and target enforcement action.
- Data sharing restrictions have been addressed in Wales by a memorandum of understanding between local authorities and Rent Smart Wales.

Civil wrongs:

- There has been a move away from traditional forms of prosecution towards financial penalties, levied by way of a civil penalty (England), rent penalty notices (Scotland), or fixed penalty notice (Wales and Northern Ireland).
- This move has created new issues around the variability in the use of the penalties and around its collection. Participants expressed diverse views regarding their role and effectiveness.
- Our findings suggest that the effectiveness of rent penalty notices in Scotland may be undermined by the introduction of Universal Credit and the inability of local authorities to request termination of the benefit at source.

Two-tier authorities (England):

- The existence of two-tier authorities in England, and the awkward distribution of responsibilities between them, means that there is a need for a more streamlined approach in organising those responsibilities. This can be resolved locally, but national guidance would be welcomed.

Legislative development

- Reflecting longstanding concerns,⁵ participants in Scotland and England criticised the law governing the PRS as fragmented, opaque and lacking strategic focus. Calls were made for consolidation and simplification of the law as a means of facilitating more effective enforcement practices.

Short-term funding:

- Short-term funding streams have proved problematic for local authorities and do not assist the development of strategic approaches.

Enforcement strategies and styles

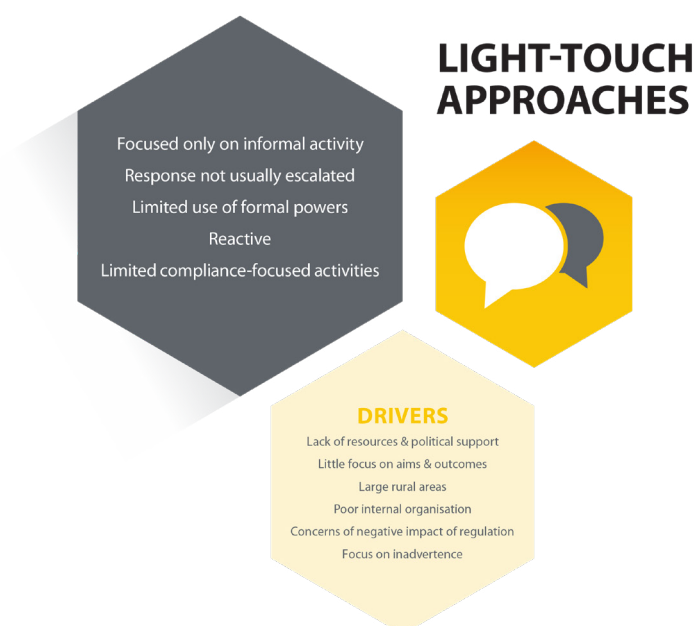
UK local authorities are responsible for developing regulatory and enforcement strategies to address poor standards and management practices in their PRS. On a strategic level this includes decisions on the tools and activities that are prioritised.

- Informal enforcement action directed at the individual landlord or letting agent includes education, advice or guidance, persuasion, and negotiation.
- Formal enforcement activity includes legal action, for example, serving statutory notices, civil penalties or prosecuting landlords.
- Compliance-focused activities targeted at the wider sector can include dedicated advisory services, landlord training, accreditation schemes, newsletters or landlord forums.

⁵ Marsh and Gibb, The Evolving Private Rented Sector

Findings suggest that at least four types of strategy currently operate in the sector: i) light-touch approaches, ii) hard-line approaches, iii) compliance-focused approaches, and iv) creative approaches.

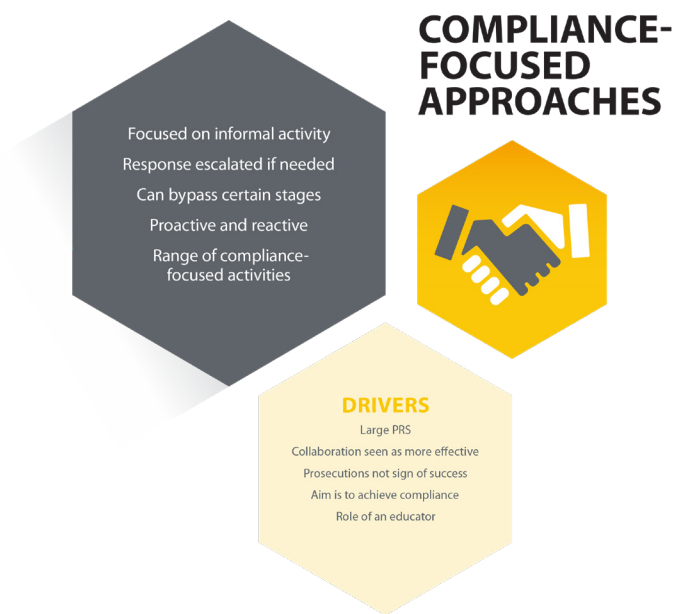
Some local authorities in the UK favour non-coercive activities and a “light-touch approach”. Adequate resource investment, political support, robust enforcement policies and a strong strategic approach are key factors that contribute to effective enforcement. These factors are however largely absent from local authorities adopting a light-touch approach.



Because of the perceived weaknesses of light-touch approaches, some UK local authorities are moving towards more “hard-line” or “deterrence-focused” strategies” that place the use of criminal sanctions to the fore. However, there are limitations and challenges associated with relying this style of enforcement as the primary means of regulating the sector (see below).



Some local authorities and Rent Smart Wales are seeking ‘a synergy between punishment and persuasion’⁶ whilst prioritising a “compliance-focused” approach. These enforcement agencies are open to using formal tools where necessary, but the primary response is to help landlords comply (rather than impose penalties). These agencies appear to occupy a middle ground between light-touch and hard-line enforcement approaches.



Some authorities appeared to be adopting “creative approaches”. These local authorities are distinctive in their understanding of the problem and possible resolutions, and their adoption of alternative regulatory techniques. Poor housing standards are seen as part of a more complex reality, with issues related to poverty, deprivation and tenant vulnerability comprising a key part.



⁶ R. Baldwin, M. Cave and M. Lodge, (2011) Understanding Regulation. Oxford: Oxford University Press.

Enforcement styles

Decisions on pursuing hard or soft enforcement strategies in authorities do not always reflect the opinions and activities of officers. In some cases, officers adopt a flexible and collaborative approach believing it to be more successful in changing behaviours or attitudes in the long run, even though the official position of their local authority was to be hard-line.

Obstacles to effective enforcement

The findings indicate there are significant limitations and challenges associated with light-touch strategies that rely totally on persuasion or informal activities and those that are hard-line and based mostly on deterrence and punishment.

Informal approaches:

- The effectiveness of informal activity depends on the motivations and behaviours of those being regulated. Lack of awareness of the rules and inadvertent non-compliance among small landlords was highlighted by several authorities as the paramount challenge.
- Many local authorities reported that it was rare that their response would need to be escalated to more formal action illustrating the effectiveness of informal activities in achieving compliance. Where non-compliance is due to a lack of understanding or awareness, information and support is required rather than the big stick.
- The main risk of informal activity is that in areas without a real threat of formal action, landlords may simply disregard the local authority. Evidence from light-touch authorities demonstrates that relying heavily on an informal approach without possible escalation is exploited by a small minority of landlords.
- Informal activities can take longer than enforcement and there appears to be inconsistency regarding when the response will be escalated.

Deterrence-focused approaches:

- Highly coercive instruments such as prosecutions are expensive and require substantial administrative resources in order to be effective. A lack of resources made it impossible for officers to adhere to a hard-line approach.
- Under-reporting on standards by tenants, gaining access to properties and finding tenants willing to testify were additional key challenges. Migrant communities were reported to be particularly reluctant to approach the local authority due to a lack of awareness of council services, low expectations of property conditions, and a fear of public services or authority figures.
- The effectiveness of formal enforcement measures depends on court sanctions being sufficiently severe, which is, however, rarely the case.
- To prioritise punishment, particularly where insufficient advice or assistance is provided, risks undermining the good will of those who are willing to comply.

Demonstrating outcomes and impacts:

The impact of different enforcement strategies and approaches is rarely monitored or assessed, so exploring the causal impact of informal or deterrence-focused activities is difficult.

- Both local authorities and the wider sector tend to confuse the output of local authority activity (e.g. number of prosecutions) with its outcome or impact (e.g. number of properties improved). Formal activity is not an appropriate measure of success since the goal of regulation is not to secure prosecutions, but to improve standards by achieving compliance.
- Although informal activity is often recorded in the form of case notes, this data was only analysed by a few participating enforcement agencies.
- Not all local authorities regularly communicate their successes and activities to the wider sector. Keeping landlords up to date on the outcomes and activities is a crucial aspect of building effective landlord engagement and achieving compliance.

New regulatory approaches

The limitations associated with relying on either a deterrence-focused or informal approach raises questions regarding the extent to which local authorities are adopting alternative regulatory approaches.

Self-monitoring and co-regulation

- Feedback from participants suggests episodic compliance is common in the UK PRS. This is where a regulatee will obey the rules in the runup to an inspection or following another local authority intervention such as a phone call. Obedience to the rules therefore appears to depend on local authorities being active in monitoring adherence.
- Two participating local authorities tried to operate co-regulatory schemes but had encountered several challenges. If inadequate training, assessment, or development is provided to landlords to help them meet standards before accreditation, the scheme essentially becomes a self-certification exercise and is open to exploitation.
- In several case studies accreditation schemes formed part of the package of compliance-focused activities offered to landlords. There was a feeling however that generally these schemes only capture landlords who were already willing and able to comply. Particularly if used in isolation, the role of accreditation schemes may be relatively limited.

Responsive Regulation:

- Some local authorities in England are successfully applying civil penalties as part of a responsive regulatory approach. There is also evidence of the principles of responsive regulation being adopted in some areas in Scotland and by Rent Smart Wales.
- Civil penalties and rent penalty notices are seen as less effective for the most serious criminal offences and officers would sometimes immediately escalate the response to a higher tier on the regulatory pyramid. Prosecution remains an important tool at the local authority's disposal.
- Responsive regulation is however only occasionally consciously adopted as part of the overarching strategic approach and there is a lack of relevant organisational policies and procedures in place. We identified only one example of a graded response to enforcement being outlined in a written local authority enforcement strategy. This can lead to inconsistency in the application of the law.

Discussion and recommendations

The importance of a strategic approach: England, Scotland, Wales⁷

- *A significant culture change may be needed.* Local authorities need to accept that the PRS is a significant player in their local housing markets which requires strategic thought and organisation.
- In developing a successful strategic approach, *local authorities should not only consider the application of formal penalties, but also broader regulatory techniques.* This includes:
 - 1) **Aims and purpose:** An overarching goal, related organisational aims, and a clear definition of the problems at hand is key to regulating the sector in a more strategic and responsive way. Local authorities should consider if their understanding of the problem captures all relevant dimensions.
 - 2) **Holistic thinking:** The development of a holistic strategy takes account of vulnerable populations and tenant needs in the PRS. It provides an opportunity to think creatively and draw in other organisations where needed.
 - 3) **Multi-agency working:** Partnership-working is essential both to identify non-compliant landlords or letting agents and to identify and provide support for vulnerable claimants.
 - 4) **Internal organisation:** Giving strategic thought to the sector will require local authorities to consider the role of enforcement officers and the way in which the PRS teams are configured. Organising PRS licensing or landlord registration alongside other licensing activities can lead to inefficiency, lack of communication and confusion regarding the delegation of roles and responsibilities.
 - 5) **Adopting an outcomes focused approach** can help local authorities move away from a more traditional output-focused approach. Once the ultimate aim or goal has been agreed, local authorities will need to make an evidence-informed decision on the desired outcomes; the changes or benefits that they hope will result from their enforcement activity.

Improving the availability of data

- *Low level geographical information is key* if local authorities are to successfully develop strategies that exert effective leverage on different landlord types and local housing market conditions.
- Unless significant changes are introduced in the institutional architecture of landlord organisations, we are a long way from co-regulation as a plausible solution.
- In England, we believe a national system of registration will be the only means of providing local authorities with the data they need to regulate the sector effectively.
- The following three key factors will need to be taken into consideration in introducing and improving national registration schemes:
 - 1) **Identifying non-compliance:** The sector is characterised by fluidity and a lack of landlord knowledge about relevant requirements. Proactive enforcement, data sharing protocols and joint working are key in addressing the disparity between the number of landlords operating in the sector and the numbers registered.

⁷ In Northern Ireland, the housing functions with local authorities is limited. The development of housing strategy rests with the Department for Communities and statutory responsibility for homelessness with Northern Ireland Housing Executive.

- 2) **Scheme objectives:** National systems of registration or licensing require purpose. In Scotland and Northern Ireland participants described a deficit in purpose. Many local authorities in Scotland are still focusing on the administration of the scheme rather than on making it more policy purposeful.
- 3) **Information sharing agreements:** If the information is used in a passive manner or cannot be accessed by local authorities, there may be little point in having it. In Northern Ireland current data sharing restrictions significantly limit the national registration scheme's usefulness as a means of targeting enforcement and communicating with the sector at a local level. Local authorities in Northern Ireland also lack incentives to enforce it.

Maximising the effectiveness of compliance-focused activity

- An exclusive focus on formal enforcement overlooks some of the most important aspects of the work of local authorities. The data illustrates, in some cases, an increased emphasis on providing advice and information through dedicated advisors, helplines, training sessions, and other support mechanisms.
 - *Inadequate knowledge of the rules and capacity to comply appears to be particularly salient factors that affect compliance in the UK PRS.* This suggests that compliance-focused activity will often be appropriate.
 - Our research adds *new insights into certain principles and approaches that may support the effective use of compliance-focused activities.*
- 1) **A balanced approach:** Lessons from the case studies indicate that in isolation neither compliance nor deterrence-focused strategies are likely to be effective in a PRS context and that local authorities should aim to combine both approaches. Local authorities adopting compliance-focused or creative approaches clearly demonstrate the benefits of a blended range of tools or approaches.
 - 2) **A strategic approach:** Compliance-focused approaches appear to be most effective when a range of activities are provided systematically and regularly and targeting the sector at large. Ad hoc communication with individual landlords will only have a limited impact.
 - 3) **Evidence informed:** As vulnerable tenants are significantly less likely to approach their local authority, an approach based solely on complaints received is not fully capturing the extent of non-compliance.
 - 4) **Greater nuance in the language of non-compliance:** Policy discussions on the PRS suggest a binary division between the majority of responsible landlords and the minority who are deviant in some way; the "criminals" or "rogues". This term is unhelpful in the context of the sector and unlikely to resonate with the many landlords who may not wilfully neglect the law nor with those local authorities that expend significant effort in responding to this type of behaviour.

The availability of resources

- A blend of different enforcement strategies is costly, and local authorities already struggle with the impact of austerity measures. Services require adequate funding to develop appropriate and effective responses to the changing nature and context of the PRS.
- Although we recognise that some funding has become available in England, this is usually made available under an extremely tight bidding process and is generally only available for short-term projects. Our research suggests that such staccato projects make little sense if longer term strategies are to be developed.

Prevention

- Most case studies seemed to adopt a traditional approach to regulation, e.g., a monitoring of obedience to the rules and a response to a breach of those rules (via formal or informal activity).
- The development of new *compliance-focused activities* – such as the dedicated advisory function of some Scottish councils and the landlord helpline introduced in Northern Ireland – suggests a growing concern about the prevention of harm in the first place.
- These initiatives could potentially reduce the level of non-compliance from inadvertence and thereby prevent more costly enforcement action.

Responsive regulation

- A clearly articulated enforcement pyramid can lead to less inconsistency and greater procedural fairness in the approaches adopted by officers. Rather than escalation (or de-escalation) being applied at the discretion of individual enforcement officers, this should be part of the enforcement strategy.
- A range of tools is needed to respond to different types of landlord behaviour, and the threat of criminal prosecution adds to the effectiveness of civil penalties.
- Our research however suggests that both *the regulatory efforts of local authorities and responsive regulation in the PRS are seriously undermined by the low fines and other sentences issued by the courts.*

A tenant-focused approach

- There is (rightly) much discussion about the ways in which local authorities can engage with landlords and letting agents. There is less discussion about ways of engaging with tenants.
- Creative authorities demonstrate the benefits of building strategic collaborations with a wide array of services in order to meet the advice and support needs of renters by, for example, effective signposting or referral processes.

Recommendations for local authorities

All local authorities in the UK should develop more detailed PRS strategies.

- When formulating their strategy, local authorities should adopt an overarching goal, clear aims and objectives, and an explicit definition of the problem they are aiming to address.
- Local authorities should integrate and, wherever possible, co-locate landlord registration alongside other housing services.
- Local strategies need to reflect the needs of private renters and consider the specific issues experienced by vulnerable tenants.
- Local authority enforcement teams should aim to build strategic collaborations with a range of internal and external partners to assist in the identification of poor property conditions and in signposting tenants to the needed support.

Local authorities should aim to improve the ways in which positive outcomes are defined, recorded and communicated to the wider sector.

- Local authorities should move away from an output-focused approach and communicate success in terms of outcomes achieved.
- Local authorities should report on cases resolved both by informal and by formal action.
- Wherever possible, the impact of compliance-focused activities should be evaluated.
- Outcomes of enforcement activity should be regularly communicated to landlords and letting agents as part of building a positive relationship with the sector.

Strategies that are entirely based on either compliance or deterrence-focused activities are unlikely to be effective in a PRS context. UK local authorities should aim to combine both approaches.

- Local authorities should provide a range of compliance-focused activities as part of their overarching strategic approach. This could include, for example, training sessions, a dedicated advice service, landlord forums, online information and regular newsletters.
- In Scotland local authorities should use the national registration scheme to communicate with and upskill the sector.
- Rural local authorities should learn from the experience of COVID-19 to explore how digital technologies can be used to share advice and information with the sector.
- Compliance-focused activities must operate in the shadow of the law, with formal enforcement offered as a viable alternative.
- Pyramidic or responsive approaches to enforcement (where adopted) should be part of the enforcement strategy and clearly communicated to the sector.

Recommendation for governments

UK and devolved governments should improve the advice and guidance available to UK local authorities on regulating the PRS. This should include advice on:

- Multi-agency working and building effective partnerships with public services and external partners. The focus of these activities should be to identify poor conditions, target enforcement activity, and provide tenants with needed support.
- Processes to integrate services or coordinate operations where co-location or the creation of new organisational forms is not a realistic objective.
- In England, consideration should be given to the issues faced by two-tier local authorities with responsibilities across those authorities.

UK and devolved governments should improve the data available to local authorities on the PRS.

- In England, a national registration system of all landlords as well as letting agents should be introduced.
- National schemes of registration or licensing should have clear aims and purpose.
- The Northern Ireland Assembly should consider whether the national registration scheme as currently configured is fit for purpose. Current data sharing restrictions are significantly limiting its usefulness as a means of targeting enforcement and communicating with the sector at a local level.

Given the significance of the regulatory role played, and of the private rented sector itself, UK and devolved governments should re-consider their approaches to resource allocation to local authorities.

- Local authorities should receive, and allocate, adequate funding to develop appropriate and effective responses to the changing nature and context of the PRS.
- Funding programmes need to build in sustainable longer-term goals, as opposed to short-term sticking plasters.

UK and devolved governments should consider technical amendments to the existing suite of legislation, as well as codification of the diverse legislative provisions which currently exist.

- The various provisions regarding the regulation of the PRS are found in diverse locations of primary and secondary legislation, with statutory guidance. Codification is good practice, particularly bearing in mind the needs of the landlord community.
- Clearer sentencing guidelines need to be provided to criminal courts to ensure that punishment is proportionate to the nature of the offence.
- Trading standards should be entitled to serve civil penalties against the company directors who are the controlling figures behind the company form.
- Data sharing between local authorities and other agencies such as Universal Credit, that hold data that would facilitate more effective enforcement should be enabled.

1. Introduction

Poor property conditions and variable standards of housing management in the private rented sector (PRS) are among the most intractable housing issues facing the UK today. Despite a decline in the proportion of non-decent homes within the sector, one quarter (25% or 1.2 million) of PRS properties in England still fail to meet the Government's Decent Homes Standards.⁸ When compared with owner-occupied and social rented homes, PRS homes in England are more likely to have problems with damp or disrepair and to pose a higher threat to health from excessive cold.⁹

The 2017 Scottish House Conditions Survey also showed that, despite improvements, 49% of all PRS dwellings in Scotland have some disrepair to critical elements.¹⁰ In Northern Ireland, the Housing Conditions Survey shows that only 2% of PRS homes failed to meet the Fitness Standard.¹¹ However, advice providers argue that the Fitness Standard is outdated and applies low thresholds that fail to represent the actual living conditions of PRS tenants in Northern Ireland.¹² The Welsh Housing Conditions Survey 2017-18 shows that compared to other tenures the PRS has the oldest housing stock and a higher proportion of poor quality properties.¹³

A series of social policies have fundamentally re-shaped the housing market and the PRS is now intricately connected to broader patterns of inequality.¹⁴ An increasing number of vulnerable households now live in the sector. This includes people with a disability or long-term illness, households in receipt of means-tested benefits and recent migrants to the UK. Whilst poor standards may be encountered throughout the sector, it is at the lower end of the market that housing can be of especially poor quality. Vulnerable households are particularly susceptible to the harms associated with private renting, facing issues such as overcrowding, badly maintained properties, insecurity of tenure and lack of affordability.¹⁵

In addition, consumer protection and tenants' ability to assert their rights compares poorly to that which exists in other consumer markets.¹⁶

In response to these challenges, regulation of the UK PRS has been significantly restructured over the last fifteen years. Regulatory policy is changing at different speeds in each of the four jurisdictions, but across the UK local authorities now have a broader range of powers to improve standards and affect landlord behaviour.¹⁷

Local authorities however currently face the challenge of meeting increased demand with diminishing resources. In the past decade, councils across England and Wales have had their core funding from the UK Government reduced by nearly £16 billion.¹⁸ In 2019/20, they faced an overall funding gap of £3.1 billion, which is estimated to rise to £8 billion by 2024/25.¹⁹ In Scotland, councils have also experienced several years of reduced funding. Between 2013/14 and 2019/20 their total revenue funding decreased by 6%, whilst the core revenue funding reduction in some councils has been as high as 15% percent.²⁰

⁸ MHCLG (2017) English Housing Survey, [Private rented sector, 2017-18](#) (Accessed: 17/7/19)

⁹ MHCLG, [English Housing Survey](#)

¹⁰ These are often the traditional tenement apartment blocks in cities. Scottish Government (2018) [Scottish house condition survey: 2017 key findings](#) (Accessed: 22/7/19)

¹¹ Office for National Statistics (2019) [UK private rented sector: 2018](#)

¹² Housing Rights (2016) [Review of the statutory minimum housing fitness standard for all tenures of dwelling](#)

¹³ Welsh Government, [Welsh Housing Conditions Survey 2017-18](#) (Accessed: 23/4/20)

¹⁴ A. Marsh, and K. Gibb (2019) [The private rented sector in the UK: An overview of the policy and regulatory landscape](#) (Accessed: 15/4/20)

¹⁵ D. Rhodes, and J. Rugg (2018) [Vulnerability in the UK Private Rented Sector](#) (Accessed: 10/6/20)

¹⁶ L.S. Smith (2020) [Consumer rights in the Private Rented Sector](#) (Accessed: 27/7/20).

¹⁷ A. Marsh, and K. Gibb (2019) [The private rented sector in the UK: An overview of the policy and regulatory landscape](#) (Accessed: 15/4/20)

¹⁸ Local Government Association (LGA) (2019) [Local Government Association briefing. Debate on local government funding](#) (Accessed: 23/4/20)

¹⁹ LGA, [Local Government Association Briefing](#)

²⁰ Audit Scotland (2019) [Challenges and performance 2019](#) (Accessed: 23/4/20)

Local authorities in England, Wales and Scotland are also facing rising demand for the range of their services. Increasing numbers of households who are homeless or living in poverty, an aging population and rising demand for adult care service are some of the key factors which are putting additional pressure on council services.²¹ Consequently, local authorities not only have to address problems in a PRS that has grown substantially over the last 15 years, but compliance and enforcement activities targeting the sector must compete for resources against a series of higher profile issues, especially the provision of statutory services that are often seen as having a more pressing call on scarce resources.

The fact that 1.2 million households in England alone are living in substandard housing, despite the apparent increase in the regulation of the sector, raises pressing questions regarding the nature and effectiveness of current approaches in securing compliance with the law. Many commentators, landlord groups, and tenant groups have all voiced concerns about current enforcement activity being entirely inadequate.²²

Raising standards and improving compliance

The focus of our overall research programme is raising standards in the UK PRS. In this study we are concerned with raising standards such that landlords across the sector are consistently fulfilling their existing legal obligations. It is not our objective here to argue for or examine how property and management standards might be raised above those specified in current legislation.

The concept of regulatory compliance is more complex than it might first appear. We do not review these debates here.²³ For the purposes of this study, “compliance” refers both to outcomes, some of which may be measurable and quantifiable, and to a complex process which covers attitudes, behavioural intentions, and acceptance of the regulation. “Improving compliance” refers to a process whereby regulatory bodies such as local authorities can seek to influence the flow of events.²⁴ Whether or not local authority activities are successful in achieving compliance will depend on array of other processes and events.²⁵

The aim of this study

Over the last decade and a half, the UK and devolved governments have introduced a range of mechanisms which aim to address low standards of housing and improve management practices in the PRS. There is evidence which suggests that local authorities face multiple challenges in exercising their powers effectively in practice, and that strategies and approaches to managing the sector vary significantly between different local authorities. There is currently, however, a lack of research exploring how various approaches to the PRS are shaped on a local level; how local approaches draw on and interact with regulatory innovations at national level; and the principles and approaches which may contribute to effective regulation and enforcement.

²¹ In Northern Ireland local authorities are not responsible for delivery of the statutory functions in relation to homelessness (rests with NI Housing Executive) or adult care (relevant Health & Social Care Board)

²² Citizens Advice (2017) *It's Broke, lets fix it* (Accessed: 23/4/20); Generation Rent (2017) *FOI local government enforcement 2017-18* (Accessed: 23/4/20); T.J. Simcock and N. Mykkanen (2018) *The Postcode Lottery of Local Authority Enforcement in the PRS*, Manchester, UK, Residential Landlords Association, (Accessed: 7/4/20)

²³ See for example, C. Parker and V.L. Neilsen (2011) *Explaining Compliance: business responses to regulation*. Cheltenham: Edward Elgar.

²⁴ C. Parker and J. Braithwaite (2005) ‘Regulation’, *Oxford Handbook of Legal Studies*, Oxford: OUP.

²⁵ P. Drahos and M. Krygier (2017) ‘Regulation, institutions and networks’, in P. Drahos (ed.) *Regulatory theory: foundations and applications*, Acton: ANU Press. pp.1-22.

In this context, our **research aim** was:

- To investigate how UK local authorities are developing strategies to improve their PRS, and aims to provide suggestions for how regulation and enforcement in the sector could be improved.

The more specific **research questions** we addressed were:

- How are local authorities enforcing the law aimed at tackling low standards in the UK PRS?
- What PRS strategies are local authorities adopting and how do they combine formal and informal approaches?
- What can other local authorities learn from the system and approaches adopted that can be used to help shape decisions on regulating the PRS?

Research methods

We addressed these research questions in two stages.

Stage one of the research involved seven semi-structured telephone interviews with key stakeholder professional participants from national tenant groups and landlord groups to gain their views on enforcement and regulation in the sector. Participants were distributed from across England (n:3), Scotland (n:2) and Northern-Ireland (n:2). In addition, we interviewed two participants working for Rent Smart Wales. The interviews were carried out between October – December 2019 and each lasted approximately one hour.

Stage two of the research involved interviews with 61 professionals from across 13 UK local authorities. Participating authorities were distributed from across England (n:7), Scotland (n:4), Northern-Ireland (n:1) and Wales (n:1). In most cases this involved a researcher visiting the local authority and carrying out a series of one-to-one interviews with individuals involved in designing and implementing PRS strategies. Analysis included consideration of written enforcement strategies and related documentation (where available). Interviews were carried out between December 2019 – March 2020 and lasted between 45 minutes and 1.5 hours.

Sampling

The 13 case study local authorities were selected based on region and information assembled from existing sources on the enforcement strategy adopted. Because existing evidence indicates significant diversity in local authority approaches to enforcement, case studies were purposefully sampled in order to explore this variation and to capture authorities that appeared to be active in this policy area. These sources included both an initial review of online information available on local authority websites and written housing and enforcement strategies. It was not easy to identify appropriate data from existing online sources and not all authorities appeared to be active in regulating the sector. Stage 1 interviews and consultation with advisory group members therefore also helped to identify authorities who appeared to be doing interesting work in this area. This sampling approach was not applied in order to produce generalisable findings for similar authorities, but rather to provide insight into the various enforcement activities that can influence compliance and therefore property standards.

Data Collection

Primary data collection included a case study approach and semi-structured face to face interviews with approximately six participants working within each local authority. Preliminary discussions were carried out with each authority to identify the best people to speak to. In order to capture a diverse range of perspectives, the sample included individuals working at managerial and strategical level and those responsible for enforcing the legislation “on the ground”. Participants included environmental health officers, housing renewal officers, enforcement officers, housing leads and directors, research and development officers, landlord registration officers, licensing officers and managers, local landlord groups, trading standards officers, and local councillors. Most interviews were carried out on a one to one basis, although in some cases small focus groups with two or three participants were conducted.

This project was approved by the University of Bristol, School for Policy Studies, Research Ethics Committee, outlining procedures relating to confidentiality, risk assessment, and data storage and processing.

Analysis

This study adopted a thematic approach to analysis, using both inductive and deductive approaches. The coding process has been carried out using both a priori codes derived from theoretical and applied concerns discussed at the start of this project, and a posteriori analytical categories and themes developed from the initial coding process. Data was coded using NVivo using a widely recognised five-step approach.²⁶

Report structure

Chapter 2 explores the academic literature on compliance and regulatory theory. It discusses how this literature can offer a more comprehensive approach to thinking about how to improve compliance and therefore standards in the PRS. This chapter also reviews what we already know about regulatory practice in the UK PRS.

Chapter 3 first sets out the differences in the regulatory framework for the PRS across the devolved governments. The second half of the chapter draws on findings from the stakeholder interviews to identify key policy issues and lessons which can be learned from the different approaches taken.

Chapter 4 draws on findings from our case studies to explore the variations in local authority enforcement strategies in their day-to-day interactions with landlords and letting agents. Four distinct approaches to regulating the PRS are identified and the key drivers which underpin these decisions and activities are also discussed.

Chapter 5 explores the nature of obstacles that local authorities are facing and certain key issues associated with the enforcement strategies identified in chapter 4. The second half of the chapter explores the extent to which local authorities are using regulatory approaches that go beyond relying on public sector-driven formal enforcement activity.

Chapter 6 draws together the findings on the enforcement of standards in the private rented sector derived from this study. The chapter is structured around five key themes and concludes with a series of recommendations for local authorities and national governments.

²⁶ V. Braun and V. Clarke (2013) ‘Using thematic analysis in psychology’, *Qualitative Research in Psychology*, 3(2):77-101. and P. Bazeley, *Qualitative Data Analysis: Practical Strategies*. London: SAGE.

2. Setting the context: different approaches to regulation

This chapter reviews four issues that are central to a discussion of compliance and enforcement in the PRS. First, we consider the drivers of compliance. Understanding the factors that shape compliance with regulatory standards is fundamental to formulating effective policy responses. The motivations of the social actors involved in a policy sector – the primary and secondary targets of regulation (landlords and tenants) as well as regulatory agencies (primarily local authorities and trading standards bodies) – are integral to the analysis of (non)compliance. But motivations need to be understood alongside a range of contextual and institutional factors that shape - facilitate and constrain - the capacities and discretion exercised by those actors. We review these issues in the first section of this chapter.

In section two we review recent evidence on the traditional regulatory instrument most often associated with driving compliance – enforcement within a command-and-control or deterrence-focused regulatory structure.

In section three, we locate enforcement in relation to the broader regulatory literature. Thinking about effective regulatory strategies continues to develop: this section reviews several distinctive regulatory approaches that have been advocated, debated and synthesized. These are issues that have been extensively explored in the broader literature on regulation - across economics, political science and socio-legal studies - but they are not issues that have been discussed extensively in relation to the regulation of the PRS.²⁷

We conclude the chapter by briefly considering the relevance of systems thinking to our topic. Again, systems thinking has not featured prominently in regulatory analysis or housing studies.²⁸ However, ideas embedded in systems approaches complement important existing strands of regulatory thinking, particularly once the focus moves from regulation to compliance. We believe that drawing these ideas into the conversation can facilitate the richer and broader analysis that is required to develop more effective responses to non-compliance. While these ideas have informed our thinking in this report, we do not explore these points in depth here: we develop them more fully in a companion report.²⁹

The drivers of compliance

All strategies to raise standards in the private rented sector – to ensure that legal minimum standards are adhered to – are based on assumptions about the behaviours and motivations of landlords, regulatory agencies, and tenants. Why do they comply, or not, with the law? Why do they seek to assert – or otherwise - their rights? How and why do regulatory agencies select their approach to enforcement, both at the level of strategy and in day-to-day frontline decision-making? Assumptions about the motivations and behaviours of landlords and tenants – and their responses to the various regulatory instruments available - undoubtedly influence the actions of enforcement agencies. This includes assumptions about the degree of diversity within the landlord and tenant populations: if landlords all exhibit similar motivations and behaviours then a standardised enforcement approach may be justified, whereas greater diversity will call for strategies that are tailored or targeted.

Assumptions about motivations and behaviours are a starting point. They typically intersect with further assumptions about the contextual or capacity constraints that landlords and tenants face that mean that, while they may have appropriate motivations or wish to engage in desired behaviours, they are prevented from doing so.

²⁷ There are notable exceptions. The Law Commission's work on private renting was explicitly informed by regulatory theory: Law Commission (2007) *Encouraging responsible letting: a consultation paper*, CP181, London: The Law Commission; More recently the work of MHCLG's Regulation of Property Agents Working Group, chaired by Lord Best, has been informed by regulatory scholarship, and in particular the work of Professor Hodges, a member of the working group: see, for example, C. Hodges and R. Steinholtz (2017) *Ethical business practice and regulation: A behavioural and values-based approach to compliance and enforcement*, Hart.

²⁸ See K. Gibb and A. Marsh (2019) *Housing and systems thinking*, CaCHE Working Paper, Glasgow: UK Collaborative Centre for Housing Evidence.

²⁹ A. Marsh, J. Harris, and D. Cowan (2020) *Private rented sector compliance: a systems approach*, CaCHE Working Paper, Glasgow: UK Collaborative Centre for Housing Research.

Where these various assumptions underpinning compliance and enforcement action originate is an important question. In the context of the private rented sector, there is limited systematic research on these issues of motivation in which to ground policy assumptions. One alternative to systematic research is that these assumptions might be based upon accumulated local experience within the field. A third possibility is that they are entirely theoretical: for example, assumptions of self-interested behaviour that underpin rational choice models. Finally, they could be rooted in political ideology ('private landlords are a bad thing'), prejudice, or normative principle ('crime should always be punished to the full extent of the law').

These assumptions are profoundly important to the understanding of non-compliance and the policy prescriptions to address it. For example, economic theories that see compliance with regulations as being a rational calculation of costs and benefits – are the benefits of breaking the rule greater than the costs of doing so? – lead to deterrence theories that focus on increasing the size of punishment or the likelihood of detection in order to shift the cost-benefit calculation in favour of compliance. But if non-compliance has nothing to do with this type of cost-benefit calculation then the high probability of severe punishment might have little influence upon behaviours in practice, while, at the same time, they may be seen as an unduly harsh response to offences produced by unfortunate oversight rather than criminal intent.

In the context of the private rented sector, at its most simplistic this issue can devolve to debates about:

- the extent to which substandard landlord behaviour is a result of ignorance and inadvertence rather than conscious criminality;
- the extent to which tenants are unwilling to assert their rights because of their lack of security of tenure and worries about retaliatory eviction, rather than ignorance of what those rights are; and
- the extent to which local authorities lack the resources, rather than the powers or the political will, to pursue effective enforcement strategies.

In each case, the issue being raised is whether social structures and institutional constraints, rather than motivation, lie at the root of the problem.

Clearly, the debate is considerably more nuanced than this: a host of further factors have been identified as shaping compliance behaviours. However, the private rented sector discussion largely occurs in isolation from the broader literature on compliance, which offers more comprehensive approaches to thinking about the factors shaping compliance. Here we focus briefly upon providers' – landlords' – motivations because this is the primary target of regulation and fundamental to driving standards within the sector.

The concept of 'motivational postures', which is based upon empirical studies of regulated populations, captures a range of responses to regulatory oversight.³⁰ Five such postures have been identified:

- Commitment: agreement with the aims of regulation and support for complying with its requirements;
- Capitulation: willingness to comply with regulatory requirements because they are seen as legitimate, but without necessarily supporting the aims of the regulation;
- Resistance: dissatisfaction with how the regulatory authorities operate and "a plea to authority to be fair and respectful";

³⁰ See V. Braithwaite (2017) *Closing the gap between regulation and the community*, in P. Drahoš (ed) *Regulatory theory: foundations and applications*, ANU Press, pp.33-34; a key empirical study is J. Braithwaite, T. Makkai, and V. Braithwaite (2007) *Regulating aged care: Ritualism and the new pyramid*, Cheltenham: Edward Elgar.

- Disengagement: ignoring regulatory requirements and carrying on business-as-usual;
- Game-playing: attending to regulatory requirements but searching for loopholes and ways of circumventing regulatory authority in order to continue operating in a preferred manner.

While it is possible to distinguish these five motivations in theory, empirical research suggests that in practice some members of regulated populations display a mix of motivations, particularly in respect of the defiant postures: for example, both resistance and game-playing. Equally importantly, the motivational posture of a specific individual or organisation can change over time, in part in response to an evolving regulatory context.

In his seminal ethnographic study of the regulation of water pollution, Hawkins identified that inspectors tended to classify regulated firms into one of four categories, which shaped their regulatory response to the firm:

- socially responsible companies: key personnel would feel bad if they discover the company is causing pollution;
- unfortunate companies: lack the technical or financial resources to address the pollution they are causing;
- reckless companies: openly defy the regulations and refuse to comply;
- calculating companies: contravene the regulations in secret and think they can get away with it.³¹

This classification acknowledges not simply motivations but also constraints and behaviours. It suggests a mix of regulatory responses involving both persuasion and punishment. This is only one of several attempts to capture diversity within a regulated population.

A key question for any regulated sector, including the private rented sector, is the distribution of the regulated population across these categories: are most providers socially responsible, unfortunate, reckless or calculating? And how do we know? It is a question that most of our case study local authorities had, at best, a qualitative feel for, rather than having undertaken a well-calibrated systematic assessment. A typical characterisation of the compliance orientations among the local private landlord population was:

*... like a lot of enforcement, there's those that will comply because they want to comply, there's those that just are, shall we say, a bit lazy about complying and when it's flagged up they'll get on with it. There's those that take a bit more of a shove to say, "well if you don't, this is what we could do", and that's a few more that then comply, and then there's those at the very top of that triangle that just say, right, on you go, take me to court, do your worst and then we'll see whether we'll bother or not, which are arguably the very worst ones.
(Head of landlord registration, Scotland)*

³¹ K. Hawkins (1984) *Environment and enforcement: regulation and the social definition of pollution*, Oxford: Clarendon Press.

One of the most comprehensive statements of the drivers of compliance is offered by Parker and Neilsen, who have proposed what they term a “holistic compliance model”.³² They structure their discussion around fourteen factors, divided between those relating to spontaneous compliance and to enforced compliance:

Table 2.1: Parker and Neilsen’s fourteen compliance factors³³

<p>Spontaneous compliance factors</p> <p><i>Economic, social and normative motives</i></p> <ol style="list-style-type: none"> 1. Social and economic costs and benefits 2. Degree of acceptance of the regulation 3. Respect for the law in general 4. Existence of non-official influence over the target group’s compliance <p><i>Characteristics and capacities of members of the target population</i></p> <ol style="list-style-type: none"> 5. Business model 6. Knowledge of the rules 7. Capacity to comply <p>Enforced compliance factors</p> <ol style="list-style-type: none"> 8. Respect for the regulator <p><i>Deterrence factors</i></p> <ol style="list-style-type: none"> 9. Risk that any rule violation will be reported to the authorities 10. Risk of inspection 11. Risk of detection 12. Selectivity of inspection and detection by regulator 13. Risk of sanction 14. Severity of sanction
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A strength of this approach is its breadth. It resists narrowing the focus too rapidly to the characteristics of the formal regulatory structure operating in a specific policy context; rather it sees compliance as shaped by a broader range of factors. This is evident in the prominence given to economic, social and normative factors in shaping spontaneous compliance.

³² C. Parker, and V.L. Nielsen (2017) ‘Compliance: 14 questions’, in C. Parker and V. Nielsen and P. Drahos (2017) *Regulatory Theory: Foundations and Applications*, ANU Press; For an alternative approach see R.K. Weaver (2014) *Compliance regimes and barriers to behaviour change*, *Governance*, 27(2):243-265.

³³ Source: Parker and Neilson, 2017, *Compliance: 14 Questions*, in P. Drahos (ed), Table 13.1

A culture that places considerable weight upon compliance with the law in general (Factor 3) will be reflected in a stronger likelihood of compliance with the law in a specific sector. Economic, social and normative factors (Factor 1) can be related to the concept of a “social license” to operate: this means that firms are conscious that they do not have carte blanche and must be seen to be operating within socially-sanctioned parameters – to go beyond these limits is to risk delegitimising their activities.³⁴ This can be related to acceptance of the regulation (item 2), which focuses more directly upon the question of whether the target population for a regulation (for example, landlords) consider the regulation to which they are subject to be acceptable, both in terms of its rationale and the burden associated with compliance. In the PRS, debates about the need for existing – let alone additional – regulation are long-standing, with interest groups aligned to landlords typically being less enthusiastic about extensive, and extending, regulation than those aligned to tenants.³⁵

Thirdly, the idea of non-official influence over compliance (factor 4) can be viewed in terms of organised regulatory mechanisms such as the role of trade associations in promoting and enforcing codes of practice. Alternatively, it can be thought of as referring to the effects that social network membership and peer group effects can have upon normative standards and therefore compliance behaviour.

Several of these compliance factors - particularly those associated with deterrence - can usefully be prefaced by the word ‘perceived’ because it is the perceived risk, severity, benefit that is the more likely basis for decision, and these perceptions could be based upon a range of information that might or might not be accurate.³⁶

Thus, this model invites us to consider regulation in a broader sense than formal enforcement. It invites consideration of the relative power of different regulatory levers and the identity of influential regulatory actors. Much of the regulatory literature focuses upon the effectiveness of various instruments of, in Parker and Neilsen’s terms, enforced compliance: that is, primarily command-and-control or deterrence-focused approaches. However, there are limits to the leverage offered by such enforced compliance mechanisms. Our ability to increase compliance and raise standards within a sector would be enhanced by also considering more closely the spontaneous factors identified by Parker and Neilsen.

This point is at the core of arguments for adopting decentred and pluralist approaches to regulation, on the one hand, and behaviourally-informed public policy, on the other. More fundamentally, it speaks to:

... a profound recognition that self-control is a necessary element of any social ordering since rules cannot be created for every imaginable harm nor can inspectors watch over everyone all the time. For this reason, all types of regulation must, in the final analysis, promote self-regulation.³⁷

We consider some of these arguments a little further below. A key point here, though, is that we would want to put a question mark next to the term “spontaneous” to describe these broader compliance factors. This term might be taken to indicate that these factors are beyond the reach of policy. However, that invites us to consider the extent to which they are variables that are amenable to influence: not only do they change over time, but there is scope to explore how they can be changed. To what extent is it possible to, for example, deliberately reshape the degree of acceptance of a particular regulatory regime by shifting social norms or facilitate the strengthening of non-official influences on compliance?

³⁴ See, for example, G. Lynch-Wood and D. Williamson (2007) *The social licence as a form of regulation for small and medium enterprises*, Journal of Law and Society, 34(3), 321-341.

³⁵ J. Rugg and D. Rhodes (2003) *‘Between a rock and a hard place’: the failure to agree on regulation for the private rented sector in England*, Housing Studies, 18: 6, 937-946.

³⁶ The importance of perceptions in shaping decision making, and how such perceptions can be reshaped to account of known decision making biases, is a core issue in the literature on behavioural public policy. For an overview see, for example, E. Shafir (ed) (2012) *The behavioral foundations of public policy*, Princeton, NJ: Princeton.

³⁷ C. Coglianese and E. Mandelson (2010) *Meta-regulation and self-regulation*, in R. Baldwin et al (eds) *The Oxford Handbook of Regulation*, Oxford: OUP 2010 p164.

One characteristic of the private rented sector that makes the application of insights from the compliance literature a considerably more subtle task is that the literature examines firms in a range of industries and policy sectors operating at a range of scales but where there is typically little doubt that they are part of the industry. They might raise questions of capacity, competence or motivation but there is little dispute that they are commercial enterprises selling products or services. For a significant proportion of the PRS, that basic condition is not met. Various accidental, temporary, “sideline” and amateur landlords might wish to argue that they are not primarily in the business of providing housing. This means that the normative landscape of the small landlord sector can become more confused: landlords hold beliefs, and make assertions, about what they are within their rights to do with “their” property which do not align with their legal obligations as landlords. Yet their arguments can resonate with underlying cultural assumptions about property ownership and the discretions that accompany it. There can be a clash of competing logics which makes the regulatory challenge more complicated.

Evidence on enforcement activity in the UK PRS

While regulating for compliance can encompass a broad range of activities, much of the evidence available focuses on formal enforcement. Recent studies of enforcement activities have sought to establish how often formal powers are applied in practice. This formal activity covers serving statutory notices, civil penalties or prosecuting landlords and, depending on the regulatory breach, can result in various legal outcomes such as administrative penalties, removal of licenses, or custodial sentences. Information obtained via Freedom of Information requests to local authorities in England and Wales highlighted the paucity of formal enforcement activities.³⁸ In 2017/18:

- 67% of local authorities in England and Wales did not commence any prosecutions against a private landlord
- 89% of local authorities in England and Wales had not used the new Civil Penalty Notices; 53% did not have a policy to use them
- 18% reported having not served an improvement notice

In addition, between April 2018 and April 2019 no landlord had received a banning order.

Evaluations of the early stages of licensing and registration schemes in Scotland and Wales also indicated a limited amount of formal enforcement activity, which may have been undermining their success. For example, a 2011 evaluation of Scotland’s landlord registration system reported difficulties in monitoring activity and ensuring compliance which had limited its impact on property standards.³⁹ In Northern Ireland, Housing Rights reports that many of their clients are frustrated by the lack of legal protection offered by the Housing (NI) Order 1981 (fitness standard), and the lack of enforcement by local councils.⁴⁰

Whilst a lack of formal enforcement activity among UK local authorities appears to be the dominant stance, the evidence suggests significant geographical diversity. A small number of local authorities appear to have prioritised formal enforcement, and their activities account for the majority of activity reported. For example, whilst data for England and Wales shows a 459% increase in the number of prosecutions commenced against private landlords between 2012/13 and 2017/18, this is largely attributable to Liverpool City Council, which introduced a borough-wide selective licensing and co-regulation scheme in 2015. When the Liverpool data is removed it leaves a 69% increase in the number of prosecutions elsewhere in England over this period.

Other research has suggested that local authority enforcement can be characterised as a ‘postcode lottery’.⁴¹ For example, some local authorities in London inspect one in 10 properties for hazards, while others inspect only one in

³⁸ Generation Rent, *FOI local government enforcement 2017-18*

³⁹ F. Lees and J. Boyle (2011) *Evaluation of the impact and operation of landlord registration in Scotland*, Edinburgh, Scottish Government Social Research

⁴⁰ Housing Rights (2016) [Review of the statutory minimum housing fitness standard for all tenures of dwelling](#) (Accessed: 23/4/20).

⁴¹ T.J. Simcock and N. Mykkanen (2018) *The Postcode Lottery of Local Authority Enforcement in the PRS*

600 properties.⁴² Charities and pressure groups have argued that this significant variation in levels of regulatory activity demonstrates that, with rare exceptions, landlords are not being held to account when failing to meet their legal obligations.⁴³

Local authorities are widely reported to lack sufficient resources to enforce legislation and, where necessary, to prosecute landlords. Measures to reduce local government spending have had a significant impact upon enforcement activities. In 2010-2012, the average budget allocated to environmental health services per head of the population fell by 8%, whilst 1,272 environmental health officer jobs were lost.⁴⁴ The Chartered Institute of Housing and Chartered Institute of Environmental Health reported that between 2009/10 and 2015/16 local authorities reduced spending on enforcement activity by one fifth.⁴⁵ In England, these resource constraints have in some cases led to enforcement teams being reduced to a mere handful of officers, and difficulties in attracting and retaining trained Environmental Health Officers (EHOs).⁴⁶ For example, Birmingham City Council has only five EHOs to cover a city of 1.1 million people.⁴⁷ The lack of ring-fenced local funding for enforcement leaves this area of activity exposed to budgetary pressures as it competes with other council services for resources.

Whilst limited resources clearly impose significant constraints on local authority enforcement activities, this does not in itself explain why some local authorities report much higher levels of formal enforcement activity than others. This in turn leads to questions about the range of contextual factors that can affect the development and operation of a local authority's enforcement strategy.

Theorising regulatory approaches

Our aim here is to provide a brief outline of some key themes in the regulatory literature to provide points of connection with the discussion of the regulatory approaches we encountered in our empirical work.⁴⁸ We do not at this stage discuss the risks associated with regulatory interventions producing a variety of unintended and undesirable consequences.⁴⁹

Legislative standard setting followed by enforcement action – whether criminal, civil or administrative – against those detected as being in breach of the standard, of the type discussed in the previous section, is the starting point of the debate over regulation. This is the so-called “deterrence-focused” or “command and control” approach to regulation. This approach has the advantage of relative clarity and simplicity. Much regulation still takes this form.

However, deterrence-focused regulation has been subject to sustained criticism on both empirical and theoretical grounds. From the empirical perspective, researchers studying how regulators go about their work in practice have identified more nuanced approaches to the use of rules. Even when legislation is highly prescriptive about the punishment(s) that should follow a breach, frontline regulators can adopt a less formal approach and, through regulatory conversation and dialogue, seek to persuade an offender to change behaviour and bring their activities into alignment with the regulation. The concept of “parameters of acceptable deviance” has been proposed to capture transgressions that do not immediately trigger formal enforcement.⁵⁰ Indeed, empirical studies indicate that in some cases regulators will try as many other tools as possible before taking formal action: law is viewed as the “last resort”.

⁴² Pidgeon, C. (2016) *Rogue Landlords in London: A survey of local authority enforcement in the private rented sector*, (Accessed: 8/7/19)

⁴³ Citizens Advice (2019) *Getting the House in Order: How to improve standards in the private rented sector* (Accessed: 22/7/19)

⁴⁴ Shelter (2014) *Safe and Decent Homes: Solutions for a better private rented sector*

⁴⁵ CIH and CIEH (2019) *A licence to rent*

⁴⁶ Housing, Communities and Local Government Committee (MHCLG) (2018) *Private rented sector: Fourth Report of Session 2017-19*

⁴⁷ MHCLG, *Private rented sector*

⁴⁸ For extended and comprehensive discussions see: R. Baldwin, M. Cave and M. Lodge (eds) (2010) *The Oxford Handbook of Regulation*, Oxford: OUP; D. Levi-Faur (ed) (2011) *Handbook on the politics of regulation*, Cheltenham: Edward Elgar; P. Drahoš (ed) (2017) *Regulatory theory: foundations and applications*, Acton: Australian National University Press. There are important strands of the regulatory debate – such as the merits of principles-based regulation – that we do not address here: on which, see J. Black (2008) *Forms and paradoxes of principles-based regulation*, *Capital Markets Law Journal*, 3(4), 425-457.

⁴⁹ On which, see P.N. Grabosky (1995) *Counterproductive regulation*, *International Journal of the Sociology of Law*, 23, 347-369.

⁵⁰ M. Edwards (2006) *Law and the parameters of acceptable deviance*, *Journal of Criminal Law and Criminology*, 97(1), pp.49-100.

We can differentiate at least two interpretations of the move away from formal enforcement. On the one hand, a reliance on persuasion, and a range of other activities short of formal enforcement, can flow from a belief that such informal activities are a more effective route to achieving the ultimate objective of greater compliance with the regulations. On the other hand, they can be a warning sign either of a failure to take the issues seriously or of “regulatory capture”: that is, the regulatory agency is making policy and taking action in a way that is unduly influenced by the interests of the regulated population, which ultimately undermines the purpose of the regulation.⁵¹ Distinguishing between the two interpretations by observing a regulatory agency’s actions alone can be difficult. One key issue is how much of a “last resort” formal enforcement action appears: there is an important difference between formal enforcement rarely being used and it never being used.

From a theoretical perspective, academics – partially influenced by the empirical research – have argued that the formal deterrence-focused approach has a range of weaknesses that lead to the conclusion that it is an insufficiently subtle regulatory approach.⁵² A range of alternatives have been proposed.

Responsive and smart regulation

Responsive regulation is perhaps the most well-known alternative approach in the academic literature.⁵³ It is based on the idea of a pyramid of regulatory strategy and a pyramid of regulatory enforcement, as well as the idea of cross-sectoral co-regulation. The pyramids are illustrated in Figure 2.1. The base of the enforcement pyramid comprises soft, informal actions by regulators; ascending the pyramid increases the intrusiveness, formality and severity of the interventions. Most regulatory activity should take place around the base of the pyramid. Only if regulated actors don’t respond to dialogue and persuasion is the principle of escalation applied. Formal actions such as license revocation are rare and can indicate a failure of softer strategies. Sufficiently serious violations of the regulations can result in immediate escalation. De-escalation – a move down the pyramid – can, in theory, follow a demonstration of increased compliance on the part of the regulated actor, although when a move to formal action destroys trust between regulator and regulatee then research suggests it can be difficult in practice to de-escalate and move back to primarily soft measures.⁵⁴

⁵¹ Regulatory capture may involve direct influence by the regulated population: members of the regulated population are able to make representations into, or participate in, the policymaking process in such a way as to influence the outputs of policy so they are favourable to, or at least relatively benign for, their interests. However, capture can be more indirect. The broad socio-economic and political context can be such that the regulatory agencies give so much weight to the interests of the regulated population that it ultimately neutralises their regulatory activities, even without the members of the regulated population trying to exert influence directly. One of the most egregious examples of this is discussed in Gunningham, N. (1987) *Negotiated non-compliance: A case study of regulatory failure*, *Law & Policy*, 9, 1, 69-95.

⁵² There has been a parallel developments in policy debates, often framed under the banner of “better regulation”. However, there is an important difference between the two discussions. The academic debate has been preoccupied with effective regulation, rather than necessarily with reducing regulatory activity. In contrast, in practice the focus of the better regulation policy agenda has been deregulation. See, for example, R. Baldwin (2005) *Is better regulation smarter regulation?*, *Public Law*, 485-511.

⁵³ The argument originates with I. Ayres and J. Braithwaite (1992) *Responsive regulation: Transcending the deregulation debate*, Oxford: OUP.

⁵⁴ Responsive regulation has itself been subject to significant critical response. It raises a range of important issues such as the risk of inequities – similar offences being treated differentially due to regulators’ assessment of the compliance orientation of the regulatee. There are also concerns that while the pyramid idea has been extremely influential, the arguably more important concept of tripartite co-regulation has been relatively neglected: P. Mascini (2013) *Why was the enforcement pyramid so influential? And what price was paid?*, *Regulation & Governance*, 7, 48-60.

Figure 2.1 The regulatory pyramids of responsive regulation



Much of the development in regulatory policy towards the PRS over the last fifteen years could be interpreted as adding or filling in tiers of the regulatory pyramid, opening up the scope for more flexible, clearly articulated and better calibrated strategies of escalation and de-escalation.

While responsive regulation is seen as promoting this principle of movement up and down the pyramid, smart regulation places more emphasis upon strategies that combine regulatory instruments in ways that capitalises upon complementary strengths and neutralises weaknesses.⁵⁵ As with responsive regulation, smart regulation acknowledges the possibility of looking beyond the state to other social actors to provide regulatory input. Indeed, it goes further and suggests that there can be situations in which the state may not be as well-placed as actors in the private sector or civil society to deliver effective regulation.

Decentred regulation

Taking this idea further is the concept of “decentred regulation”. Much regulatory thinking starts from the state – in the case of the PRS: local authorities, licensing agencies, trading standards and the police – as the core of the regulatory regime. Decentring regulation is an invitation to look more widely at the organisational landscape of a policy sector to understand what else is going on and which other organisations and social actors are acting in a regulatory capacity.⁵⁶ Approaching regulation as “decentred” frequently signals a concern with processes of self-regulation.⁵⁷

The possibilities for, and desirability of, industry self-regulation as a key part of a regulatory regime are the subject of a substantial academic literature.⁵⁸ Self-regulatory processes can overcome knowledge and access problems, they can be relatively agile and provide regulation with different sources of legitimacy to public sector-focused regulation. But there are longstanding questions about the effectiveness of such mechanisms in dealing with problematic behaviours robustly enough to address the public interest and policy concerns that justify regulation in the first place.⁵⁹

⁵⁵ N. Gunningham and P. Grabosky (1998) *Smart regulation: designing environmental policy*, Oxford: Clarendon Press.

⁵⁶ P. Grabosky (2013) *Beyond Responsive Regulation: The expanding role of non-state actors in the regulatory process*, Regulation & Governance, 7, 114-123.

⁵⁷ See J. Black (2001) *Decentring regulation: understanding the role of regulation and self-regulation in a 'post-regulatory' world*, Current Legal Problems.

⁵⁸ See for example N. Gunningham and J. Rees (1997) *Industry self-regulation: an institutional perspective*, Law & Policy, 19(4), 363-414.

⁵⁹ F. Bowen (2019) *Marking their own homework: The pragmatic and moral legitimacy of industry self-regulation*, Journal of Business Ethics, 156, 257-272.

These non-public sector actors may be acting entirely independently of the state. Recent developments facilitated by emerging technological opportunities - the platform MarksOutOfTenancy, for example, is one of the more prominent of several new apps - represent mechanisms seeking to regulate quality in the private rented sector (via tenant feedback and rating) that have been established independently of the state.⁶⁰ It is equally common to conceive of self-regulation – by organisations such as trade associations or professional bodies – as acting in a regulatory capacity not independently but “in the shadow of hierarchy”: the threat of a more interventionist public sector-driven regulatory regime acts as a spur to self-organise and self-regulate. This is sometimes referred to as the “gorilla in the closet” argument.⁶¹

Alternatively, these social actors might be seeking to co-ordinate with the public sector or to contribute to state-centred regulatory strategies. Indeed, they might be engaged in co-regulation – drawing on the different sources of legitimacy of the public sector, private sector and civil society to deliver regulatory instruments with greater credibility with the target population. In these circumstances, it can be appropriate to think in terms of “networked regulation”.

When we move beyond thinking about regulatory action and regulatory actors in terms of enforcement by public bodies, it opens up a wide range of possibilities for the architecture of a regulatory regime. It allows us to explore the possibilities for influencing the ‘spontaneous compliance factors’ identified by Parker and Neilsen.⁶² The literature on behavioural public policy – which includes, but is not confined to, ideas around ‘nudge’ – raises the possibility of considering a broader range of behaviour change mechanisms than targeted punishment or persuasion. Policy has, for example, sought to encourage healthy eating or a more active population by attempting to shift social norms and use peer group effects. These policies use the idea that reference levels and peer group behaviours can be more powerful influences upon individual behaviour than government edicts or legislative stipulations.

Weaver observes that “Grudging - even compelled - compliance is still compliance, although it is likely to incur higher monitoring and enforcement costs”: regulatory strategies that focus on enforcement may deliver compliance even if it is unwilling, but if regulatees have not internalised the desirability of adhering to the relevant standards then compliance may only be temporary.⁶³ The attraction of behaviourally-informed regulatory mechanisms lies both in their potential to reach parts of the regulated population that are difficult to reach through more conventional enforcement approaches and, if effective, their relatively low cost. They are ways of disseminating relevant information about normative standards and desirable practices to those who are not on the regulator’s radar. These type of behavioural policy concerns give a further perspective on the purposes and possibilities of industry self-regulation but can also encourage examination of the role that other less apparent social actors and processes might play.⁶⁴ While these ideas are not entirely absent from thinking about regulating the PRS, they have not been explored in depth.

⁶⁰ marksoutoftenancy.com; The website has subsequently been incorporated, to a degree, into state regulatory strategies through the reference made to it in the Westminster government’s How to Rent guide. On the challenges presented by platforms as regulatory instruments see S. Ranchordás (2018) *Online reputation and the regulation of information asymmetries in the platform economy*, Critical Analysis of Law, 5(1), 127-147.

⁶¹ See for example P. Verbruggen (2013) *Gorillas in the closet? Public and private actors in the enforcement of transnational private regulation*, Regulation & Governance, 7(4), 512-532.

⁶² Parker and Neilsen (2017) *Compliance: 14 questions*.

⁶³ Weaver (2014), p.245.

⁶⁴ F. Mols, S.A. Haslam, J. Jetten, and N.K. Steffens (2015) *Why a nudge is not enough: a social identity critique of governance by stealth*, European Journal of Political Research, 54, 81-98; D. Centola (2018) *How behavior spreads: the science of complex contagions*, Princeton, NJ: Princeton; R. Frank (2020) *Under the influence: putting peer pressure to work*, Princeton, NJ: Princeton.

Towards the end of the 2000s there was a move to a focus upon risk in shaping regulatory strategies. Risk-based regulation is a data-driven strategy that seeks to target regulatory resources on those parts of a sector of particular concern. Targeting may be entirely upon “high risk” providers or subsectors. But if this leads actors in other parts of the sector to conclude that they are beyond the regulators’ gaze then this can lead to the accumulation of risk in “low risk” parts of the sector. This can suggest that mixed strategies – such as accompanying targeting of high risks with unpredictable random inspections on low risk subsectors - is necessary to keep low risks low. While risk-based strategies can be styled as primarily objective and data-driven it is important to acknowledge that what constitutes a ‘high’ or ‘low’ risk has an irreducible political component – high or low from whose perspective? In relation to whose wellbeing?⁶⁵

With its reliance upon data to guide the targeting of regulatory resources, risk-based regulation is part of the conversation about data, big data, and algorithmic regulation.⁶⁶ The use of algorithmic decision-making in the private rented sector – in the form of “proptech” - is currently better developed among subsectors of the landlord population than it is among regulators. This is a fast-developing area. Technology can be used not only to streamline processes of property management but also to sift and sort tenants based on their risk profile. From the regulatory perspective, there is potential to build a multidimensional, and thus comprehensive, understanding of risks and problems affecting the sector. Algorithmic regulation is seen by advocates as offering the potential for more ‘objective’ approaches to targeting regulatory action and allocating scarce resources.

One of the consequences of these developments in automation is to remind us, by implication, of the influence and importance of micro-social processes and interactions. It is not simply regulatory strategies at the organisational level that we need to understand, but also the way in which individual street-level bureaucrats approach their role.⁶⁷ Frontline regulatory decision-making is infused with political considerations, in the broadest sense, as well as emotion.⁶⁸ This can mean that regulatory policy as delivered on the ground and experienced by regulatees - landlords and tenants - can differ considerably from regulatory policy as embodied in strategy documents.

Types of regulatory activity

Recent research on PRS enforcement by local authorities has focused primarily on formal action taken (e.g., the number of prosecutions or formal notices served).⁶⁹ It does not consider the nature, range, and impact of compliance-focused activities undertaken by local authorities. These are actions that fall short of prosecution or other formal activity, and can include providing advice or guidance, holding training sessions or other events, or issuing warning letters.

This informal work may in practice form the bulk of local authority regulatory activity. In the early evaluation of the Scottish registration scheme, local authorities were asked to state the main focus of their enforcement activities; the most common response received was the provision of advice and assistance to landlords.⁷⁰

⁶⁵ See J. Black and R. Baldwin (2012) *When risk-based regulation aims low: approaches and challenges*, Regulation & Governance, 6, 2-22; R. Baldwin and J. Black (2016) *Driving priorities in risk-based regulation: what's the problem?*, Journal of Law and Society, 43(4), 565-595.

⁶⁶ For example, K. Yeung and M. Lodge (eds) (2019) *Algorithmic regulation*, Oxford: OUP.

⁶⁷ See Hupe, P., Hill, M. and Buffat, A. (Eds) (2015) *Understanding street level bureaucracy*, Bristol: Policy Press.

⁶⁸ J.L. Short (2019) *The politics of regulatory enforcement and compliance: Theorizing and operationalizing political influence*, Regulation & Governance, earlyview.; S. Fineman and A. Sturdy (1999) *The emotions of control: exploration of environmental regulation*, Human Relations, 52(5), 631-663.

⁶⁹ Citizens Advice (2017) *It's Broke, lets fix it* (Accessed: 23/4/20); Generation Rent (2017) *FOI local government enforcement 2017-18* (Accessed: 23/4/20); Simcock, T.J. and Mykkanen, N. (2018) *The Postcode Lottery of Local Authority Enforcement in the PRS*, Manchester, UK, Residential Landlords Association, (Accessed: 7/4/20)

⁷⁰ Lees and Boyle, *Evaluation of the impact and operation*

Research in England also shows informal approaches to be widely used in the management of selective licensing areas.⁷¹ Participating local authorities reported that upon identifying breaches of the scheme's conditions, landlords would often be given work schedules to complete and would then schedule another inspection. Landlords with unlicensed properties would often be given a second chance to license before prosecution was commenced. Formal enforcement action was found to be employed as a 'backstop', with improvement notices, prosecution, and financial penalties only being applied when landlords repeatedly contravened the scheme requirements.

This raises questions regarding the ways in which the various enforcement regulatory strategies are developed and operated; this is particularly the case for those that go beyond formal enforcement approaches. Strategies and approaches will likely vary significantly between different local authorities. However, there is currently a lack of research addressing the ways in which approaches are shaped at a local level.

The PRS is not homogenous. Nor does it always stand in the same relationship to other parts of a local housing system. In assessing alternative approaches to regulation, this study starts from the assumption that the operation and effectiveness of enforcement strategies will be influenced by contextual factors. These factors could be types of landlord and their motivations; the size of the sector relevant to other tenures; the composition of demand; rent levels; and the overall level of housing demand.

It is highly problematic to view landlords as a cohesive group with uniform aims and objectives.⁷² Some landlords may be motivated by short-term profit above all else, while some focus on longer term capital growth; others may have more altruistic motives for letting property. The heterogeneity in motive, intent and indeed geographical location poses challenges for policymakers and regulators.⁷³

Hence, if regulatory activities are to be effective in affecting behaviour then they must be sensitive to the context in which they occur. Newham's enforcement activities are widely cited as an example of best practice and an illustration of what can be achieved if the political will and resources are made available to tackle low standards. However, the factors that operate to bring about an outcome in a specific situation are very unlikely to be universal: the context differs both from place to place and over time.⁷⁴ In seeking to explore regulatory effectiveness it is crucial to embed this sensitivity to context at the heart of the analysis.

Systems thinking and regulation

The label "systems thinking" can be applied to a range of different types of analysis used for diverse purposes.⁷⁵ Central to most systems approaches is an emphasis upon the interconnections between the elements of a system and the recognition that the behaviour of a system as a whole cannot be predicted from the study of each of its elements in isolation. Systems thinkers are interested in complex causation and how a system's behaviour is generated by the interaction of positive and negative feedback loops between the elements of the system. Systems thinking is also concerned with boundaries: what is inside the system we are interested in; what is 'outside' the system and part of its environment; and how do the system and its environment interact.

When we are trying to understand enforcement action in the PRS, does it make sense to study it as an activity in isolation? Or is it better to recognise that enforcement is embedded in the broader activities of the local authority and may be in tension with other priorities, such as ensuring housing supply or managing the number of homeless households,⁷⁶ and then explicitly analyse the relevance of these tensions and interconnections for the behaviour of the system? This is a question of where we draw the system boundary for the purposes of analysis.

⁷¹ Lawrence, S. and Wilson, P. (2019) *An Independent Review of the Use and Effectiveness of Selective Licensing*, (For MCHLG) Accessed 9/7/19.

⁷² Allen and McDowell, 1989, p. 5

⁷³ T. Amodu (2018) *Regulating the private rented sector: millennial themes*, Journal of Property, Planning and Environmental Law, 10(2):154-168.

⁷⁴ N. Cartwright and J. Hardie (2012) *Evidence-Based Policy: A Practical Guide to Doing It Better*, Oxford: OUP.

⁷⁵ See, for example, D.P. Strohm (2015) *Systems thinking for social change*, Charles Green Publishing.

⁷⁶ Tension with other priorities may exist in Northern Ireland but not with ensuring housing supply or managing homeless households because these functions are not within remit of local authorities there.

When we consider the effectiveness of various policy instruments in encouraging compliance can we understand them in isolation? Or do we need to understand how they interact – intentionally or unintentionally – with other policy instruments being used and, crucially, whether there are feedback loops between these instruments? For example, does increased enforcement action reduce the effectiveness of attempts to educate and inform landlords through the mechanism of reducing trust and increasing antagonism between the regulator and the regulated population? This risk is widely recognised in the literature on responsive regulation, for example, but, while it is fundamentally a systems issue, it is not typically framed explicitly in systems terms.

Ultimately, the aim of systems thinking – in adopting more holistic approaches to analysis – is to build a better understanding of situations or problems and thereby work towards more effective solutions. Some of those possible solutions might be less immediately evident than established solutions because they recognise the power of interaction, interconnection and unintended consequences.

While systems concepts have informed our thinking during the analysis and writing of this report, we do not explore their potential in great depth here. Instead we build upon the analysis presented below in a companion report that focuses upon how systems concepts, coupled with an expansive understanding of the drivers of compliance, can enhance our appreciation of both the problems the regulatory systems is trying to address and the nature of effective responses.⁷⁷

Summary

This chapter provides an overview of several areas of regulatory theory and existing regulatory practice in the private rented sector:

- Compliant behaviour on the part of a regulated population – in this case private landlords – is shaped by a range of factors, both those associated with “enforced” compliance, driven by deterrence-focused regulatory activities, and “spontaneous” compliance factors associated with broader socio-political context and prevailing social norms.
- While regulatory thinking starts with deterrence-focused regimes, a broad range of other approaches – including responsive, smart and decentred regulation – have been proposed. Regulatory practice has evolved alongside this evolution in regulatory thinking; for example, the widespread adoption of risk-based regulatory strategies.
- The key message of the regulatory literature is that much regulatory activity in practice is not focused on formal deterrence-focused enforcement action, and that more informal compliance-oriented activities can, in a range of circumstances, be more effective than formal enforcement. When developing regulatory strategies it is not necessarily a question of choosing either a formal or informal approach: blended approaches using complementary tools can be effective.
- Research on enforcement in the private rented sector has concentrated on formal deterrence-focused activities. The research shows that formal enforcement action is not widespread. While a minority of local authorities make extensive use of their formal powers, many engage in very limited or no formal action. Information on the extent and nature of informal and compliance-focused activities is lacking.
- The role and functioning of the private rented sector varies between local housing markets. Consequently, the various regulatory tools available are likely to impact upon the sector differently and regulatory strategies will need to be tailored in the light of local context.
- Ideas associated with systems thinking – which encourage us to think holistically and develop a stronger understanding of a system’s dynamics by thinking about interconnections, feedback, and complex causation – can enhance our appreciation of the nature of both regulatory problems and effective regulatory responses.

⁷⁷ A, Marsh, J, Harris, and D, Cowan (2020) *Private rented sector compliance: a systems approach*, CaCHE Working Paper, Glasgow: UK Collaborative Centre for Housing Research

3. The UK picture: Law and policy

If devolution provides the laboratory for social and legal change across the UK, housing law and the regulation of housing standards are the test tube. There have been significant shifts in the regulation of the PRS across the devolved governments in the last 15 years. In this chapter, first, we set out those differences, before providing an analysis of them. Our analysis draws on our key stakeholder interviews and draws attention to differences across the case studies.

While, at a broad level, it might be said that there is convergence over issues such as licensing of houses in multiple occupation, and local government being the sector regulator, there is divergence over issues such as licensing of landlords and properties, and registration of landlords.⁷⁸ There are different approaches to the regulation of letting agents and, to an extent, energy efficiency.⁷⁹

Nor can it be said that one government is “ahead” of another – different governments have selected different options from a relatively narrowly conceived range and have approached the issues in different ways. In any event, the housing systems between the jurisdictions, together with the individual nations’ laws,⁸⁰ have different histories and trajectories.

Housing law and the regulation of standards

In this section, we set out the key differences which now exist between the devolved parts of the UK in the ways in which the PRS is regulated. The intention is not to provide a detailed statement of law, but to set out the different approaches taken by the different governments.⁸¹

England

Although England has maintained its system of largely deregulated tenancies across the PRS, based on an assured shorthold model under the Housing Act 1988, there have been some significant alterations.

First, there has been considerable re-regulation between landlord and tenant, in that various documents and certificates (including an energy performance certificate, gas safety certificate, electricity safety certificate, tenancy deposit information, and an up-to-date copy of the Government’s How to Rent guidance) now must be supplied to the tenant before the tenancy takes effect. Failure to provide such documents means that the benefits of such a tenancy to the landlord (i.e. the mandatory eviction ground on two months’ notice) are not available. Smoke and carbon monoxide detectors must be provided and checked at the start of each tenancy. Since 6 April 2007, deposits for assured shorthold tenancies must be protected by one of the three government-approved schemes.⁸²

Landlords must now also carry out right to rent immigration status checks on occupiers of their premises. These checks have been controversial and subject to legal challenge.

As regards standards in the sector, between landlord and tenant, there is a new implied condition that the property is fit for human habitation (Homes (Fitness for Human Habitation) Act 2018). All these obligations are capable of being enforced between tenant and landlord only.

⁷⁸ T. Moore (2017), “The convergence, divergence and changing geography of regulation in the UK’s private rented sector”, *International Journal of Housing Policy*, 17(3): 444–56.

⁷⁹ Although energy efficiency of properties is regulated not by MHCLG but as a climate change initiative, by BEIS, which has implications for devolution. Housing is a devolved responsibility in Wales, but climate change is not.

⁸⁰ The laws in Scotland and Northern Ireland have long diverged from those in England and Wales. Wales has diverged from England since it acquired the power to do so in 2014.

⁸¹ As to which, see, for example, H. Cromarty (2019), *Housing Conditions in the Private Rented Sector (England)*, Briefing Paper No 7238, London: House of Commons.

⁸² MyDeposits, the Tenancy Deposit Scheme and the Deposit Protection Service

Secondly, new regulations have been imposed on letting agents. They are now required to be members of a redress body.⁸³ The Tenant Fees Act 2019 (which also applies to landlords) restricts the fees that can be levied on tenants as well as the amount of tenancy deposits.⁸⁴ There are also provisions regarding the handling of clients' money.⁸⁵ The enforcement duty for these obligations is on the local authority with trading standards responsibility (in two tier authorities, that will be the county council). However, local authorities which do not have the trading standards function may also enforce these rules.

Thirdly, there are public law provisions contained in the Housing Act 2004 which enable local authorities with environmental health responsibilities (in two tier authorities, the district or borough council) to regulate the PRS in the following ways:

(a) the Housing Health and Safety Rating System is a system which enables local authorities to inspect properties to determine the category of hazard ("any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO": s. 2). There are two categories of hazard, the most serious being Category 1, under which there is a general duty to take enforcement action. Category 2 hazards give local authorities a power to take enforcement action.

Enforcement action is by different forms of notice – mostly an improvement notice (which specifies required improvements to the property) or a prohibition order (which prohibits the use of the property). In certain cases, they may also take emergency action. Failure to comply with such notices constitutes an offence, for which the local authority can prosecute. If the local authority successfully prosecute, they must now consider whether to apply for a rent repayment order (RRO). Occupiers may also apply to the tribunal for an RRO.

In addition, under amendments in the Housing and Planning Act 2016, the local authority may charge the person (and/or their agent) with a civil penalty (except for breach of a prohibition order), as opposed to taking a prosecution, up to a maximum of £30,000. Although entitled a "civil" penalty, the local authority must prove to the criminal standard, which means that there must be a reasonable prospect of conviction using the Crown Prosecution Service's code. The MHCLG guidance suggests that local authorities should consider a series of factors in determining the level of the fine: severity of offence; culpability and track record of offender; punishment; deterrence (of the offender and others); and removing any financial benefit.⁸⁶ The particular benefit of the civil penalty regime, and an incentive for local authorities to use these powers, is that the penalty is returned to the authority's general housing fund.

(b) Provisions require the mandatory licensing of houses in multiple occupation ("HMOs") by local authorities. Conditions, for example as to the maximum number of persons allowed to occupy the property, can be attached to the licence. The licence holder must be a "fit and proper person". Only certain properties are classified as HMOs for the purposes of mandatory licensing, but these can be extended by the local authority which can designate additional types of properties ("additional licensing"). Local authorities can also designate a planning change of use where a property is to be converted into an HMO.

The local authority can prosecute a person having control or managing of an HMO if they are unlicensed or breach a condition. In addition, the local authority or occupier can apply to a tribunal for a rent repayment order, which enables the tribunal to make an award of the amount of rent (including any housing benefit or universal credit) to be repaid to the occupier. If the local authority successfully prosecute they must now consider whether to apply for an RRO.

⁸³ Either the Property Redress Scheme or the Property Ombudsman

⁸⁴ See MHCLG (2019), *Tenant Fees Act 2019, Statutory Guidance for Enforcement Authorities*, London: MHCLG.

⁸⁵ Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018 S.I. 2018/751.

⁸⁶ MHCLG (2018), *Civil Penalties under the Housing and Planning Act 2016, Guidance for Local Housing Authorities*, London: MHCLG.

In addition, under amendments in the Housing and Planning Act 2016, the local authority may charge the person with a civil penalty (except for breach of a prohibition order), as opposed to taking a prosecution, up to a maximum of £30,000 for each separate breach.

(c) Provisions enable the local authority to designate certain areas for selective licensing of private rented accommodation for up to five years. There are consultation and information requirements which must be completed before designation. There were initially two conditions by which the authority was able to make that designation: first, that the area is, or likely to become, an area of low housing demand; or, secondly, the area is experiencing a significant and persistent problem caused by anti-social behaviour. Further conditions were added in 2015, to include housing conditions, migration, deprivation, and crime. Originally, the Secretary of State's approval was required for all such schemes, but, in 2010, that requirement was removed; the requirement was reinstated in 2015 in respect of schemes where more than 20% of the local authority's geographical area or PRS stock is to be designated. By 1st January 2019, 44 local authorities operated such a scheme, with four covering the entire area and nine covering more than 20%.⁸⁷

Failure to comply with the requirement to obtain a licence or breach of a licence condition is a criminal offence, for which the local authority can prosecute. If the local authority successfully prosecute, they must now consider whether to apply for an RRO. The civil penalty regime also now applies.

The further significant intervention is the introduction of banning orders and the creation of a database of rogue landlords and property agents. A banning order is an order made by a tribunal on an application by a local authority which bans a person from letting or managing property or letting agency work for at least 12 months. The database has been effective from 6 April 2018 and only local authorities can make entries. The database was initially only accessible to local authorities but in 2019 the Government announced plans to allow the public access. A further important provision enables a local authority to require a person to give information to enable them to decide whether to apply for a banning order against that person.

The final intervention has been in relation to energy performance certificates under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended. All residential tenancies must now have a rating of at least "E" ("the minimum energy efficiency standard" ["MEES"]). That requirement, which came into effect from 1st April 2020; previously only applied to residential tenancies granted after 1 April 2018. The enforcement authority is the local authority, which may first serve a compliance notice. The authority may decide to impose a financial penalty, which ranges from £1000-£4000, depending on the offence. The requirement to have an EPC is enforced by the trading standards authority. In two tier authorities, the county council has trading standards responsibility, but enforcement for other aspects of housing management including enforcement of the MEES is the responsibility of the district council.

Wales

Responsibility for legislation in respect of housing was devolved to Wales by the Government of Wales Act 2006 and which came into force following the referendum in 2011. Consequently, the provisions of the Housing Act 2004 apply equally to Wales. However, the enforcement regimes are different, as the civil penalty regime and the extension of RROs do not apply (as they were introduced by the Housing and Planning Act 2016). The extensions to the assured tenancy regime also do not apply as they postdate the devolution of housing. The MEES applies in Wales because it relates to matters not devolved to the Welsh Government.

⁸⁷ Lawrence, S. and Wilson, P. (2019), *An Independent Review of the Use and Effectiveness of Selective Licensing*, London: MHCLG, para 1.15.

The major intervention by the Welsh Government has been the requirement for all landlords in Wales to be registered, and landlords and lettings agents must be licensed for that purpose (Housing (Wales) Act 2014). A licence lasts for five years. Licensing is on the basis of the fit and proper person test and completion of an approved training course delivered by an authorised training provider (Regulation of Private Rented Housing (Training Requirements) Wales) Regulations 2015, SI 2015/1366), and the licence can be revoked. Failure to be registered or licensed is a criminal offence, but this can be discharged by payment of a fixed penalty notice of £150 (or £250 if the offence penalty is an unlimited fine). The licensing authority is Cardiff County Council for the whole of Wales. Additionally, the local authority or licensing authority may apply to the tribunal for a rent stopping order, which halts the liability for the payment of rent for a period; the same authorities and the tenant may apply for an RRO. As in England, since 6 April 2007 all deposits relating to an AST (though not other tenancies or licences), must be protected by a Government-authorised scheme.

The other major intervention has been the Renting Homes (Wales) Act 2016, which amends the security of tenure provisions in line with a more consumer-oriented ethos. However, that Act is not yet in force.

Scotland

The Private Housing (Tenancies)(Scotland) Act 2016 introduced the private residential tenancy, which is an open-ended tenancy with a prescribed method of increasing rent. The tenancy contains mandatory and discretionary terms. One mandatory term is that the property must meet the “repairing standard”, which includes matters relating to repair, fire safety and carbon monoxide. Those matters are enforceable between landlord and tenant.

All landlords must be registered (Anti-Social Behaviour etc (Scotland) Act 2004, Part 8), which requires that they be a fit and proper person. The landlord register is a national scheme but maintained by local authorities. The fee for a single property is £66. Landlords may be refused registration, or their registration may be revoked. Where a landlord rents property without being registered, they may be prosecuted by the procurator fiscal (with a fine of up to £50,000) and the tenant may stop paying rent following service of a notice to that effect. By the Housing (Scotland) Act 2014, all letting agents must be registered, which includes a requirement that they be “fit and proper persons”. Letting agents must also follow a code of practice which came into force on 31st January 2018.⁸⁸ Enforcement of the letting agent rules is by either landlord or tenant, who can apply to the tribunal after first serving a written notice on the agent. Scottish tenancy deposit protection is similar to the model adopted in England and Wales.⁸⁹

In terms of standards, under the Housing (Scotland) Act 2006 as amended, all properties in Scotland must meet the “tolerable standard” (below which a property is regarded as unfit for human habitation) and private rented properties must also meet the repairing standard. The repairing standard has been altered by The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019, which has staggered the changes. The changes which came into force in March 2019 are that the property must meet the tolerable standard and in determining whether a property meets the standards of repair, regard is to be had to guidance issued by the Scottish ministers. In tenement buildings, where there are multiple tenures and issues over the repairs of common parts, a property will not fail to meet the repairing standard if the majority of owners do not consent to relevant works. The tenant or local authority may apply to the First-tier Tribunal for Scotland (Housing and Property Chamber) to enforce the repairing standard.

The tolerable standard derives from the Housing (Scotland) Act 1987, which remains in force, and provides the basis for the public regulation of private rented accommodation. The standard has been amended by the Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criterion) Order 2019 and now includes two new elements covering smoke and heat alarms and CO alarms. However, the enforcement powers of local authorities are contained in the Housing (Scotland) Act 2006. These enable local authorities to issue work notices, demolition orders, and maintenance orders. Work notices are in respect of sub-standard houses, which do not meet the tolerable standard (among other criteria).

⁸⁸ Scottish Government (2018), *Letting Agent Code of Practice*, Edinburgh: Scottish Government.

⁸⁹ Scotland has three operational statutory tenancy deposit schemes: Letting Protection Service Scotland; Safe Deposits Scotland; and Mydeposits Scotland.

In terms of energy efficiency, after 1st April 2020, an EPC E+ rating was to be required on all newly rented properties. In light of the current COVID-19 pandemic, the decision has been made not to launch these regulations until the crisis has come to an end. The minimum EPC regulations introduced in England, Wales and Scotland will likely pose significant enforcement challenges for local authorities partly due to difficulties associated with identifying these properties.⁹⁰

All HMOs must be licensed by the local authority and meet certain standards as provided by the Housing (Scotland) Act 2006, Part 5. The landlord or agent must be a fit and proper person, and the property must meet certain standards of suitability. The licence may include conditions and lasts for three years, but can be revoked earlier. The local authority must keep a register of HMOs. Where the HMO is not licensed or a condition is breached, the local authority can provide that no rent is to be paid, and the relevant person commits an offence which results in the payment of a fine on summary conviction and other consequential orders, such as disqualification from being a licence holder.

The Enhanced Enforcement Areas Scheme (Scotland) Regulations 2015, SI 2015/252, enables a local authority to apply to create such an area in cases of private rented housing which is either of a poor environmental standard or overcrowded, or there is a prevalence of anti-social behaviour. The benefits of an EEA include powers to apply for a warrant of entry and additional discretionary powers and powers of information. The Private Housing (Tenancies) (Scotland) Act 2016, art 3, also contains powers for a local authority request approval from the Scottish Government for the creation of a rent pressure zone, which requires that rent increases cannot exceed a CPI+ measure for no more than five years.⁹¹

Northern Ireland

The Private Tenancies (Northern Ireland) Order 2006, SI 2006/459, provides the basis for the private obligations of landlords regarding the state and condition of property, and the public obligations of local authority district councils. As regards the former, the landlord has certain repairing obligations. As regards the latter, they may serve a notice of unfitness, where the property is unfit for human habitation; if not so unfit, a notice of disrepair if substantial repairs are necessary to bring the property up to a reasonable standard (having regard to age, character and locality). The current housing fitness standard was last updated in 1992 – there was consideration of amending the standard prior to the dissolution of the Assembly.⁹² The council officer has power to enter a property on 24 hours' notice to conduct a survey or examination. Failure to comply with the notice within a reasonable period is an offence. The council can require the person to pay the administrative costs of servicing the notice.

There are other provisions concerned with the certification of fitness of properties constructed before 6th November 1956, which may affect the amount of rent that can be levied.

There is a mandatory registration scheme for landlords in Northern Ireland, the purpose of which is to be "light touch" to enable communication and better regulation of the sector.⁹³ Accordingly, there is no fit and proper person requirement. Registration contains basic information about the landlord and the property let. There is a fee of £70 payable for online registration and registration lasts for three years. Landlords must include their registration number in correspondence. Registration is through NI Direct.

A further publicly controlled scheme is the protection of tenancy deposits. Councils are responsible for enforcing this scheme, with fixed penalties up to £5,000

⁹⁰ As part of our research programme for 2021 the research team will be carrying out a separate study exploring the range of issues the PRS faces in meeting energy efficiency standards and effective strategies in driving the change towards greater energy efficiency.

⁹¹ Our study participants however emphasised that these regulations are virtually impossible to introduce in practice.

⁹² Department for Communities (2017) *Private Rented Sector in Northern Ireland – Proposals for Change*, Consultation Document, Belfast: DFC.

⁹³ Department for Social Development (2010), *Building Solid Foundations*, Belfast: DSD.

HMOs are required to be licensed in accordance with the Houses in Multiple Occupation Act (Northern Ireland) 2016, an Act of the NI Assembly. Licences are issued by the District Council for up to five years, and may only be granted if it would not constitute a breach of planning control; the owner and any agent is a fit and proper person; the management arrangements are satisfactory; it will not result in the overprovision of HMOs in the locality; and the living accommodation is fit for human habitation. An offence is committed if the HMO is unlicensed and there is no reasonable excuse for not having a licence, or if there is breach of a licence condition, with fixed penalties of up to £20,000.

Letting agents are not required to be members of accreditation schemes or subject to registration requirements. Disposal of Lands (NI) Order 1986 sets out that any stipulation that a tenant must pay the fees due to an agent for certain work commissioned by a landlord is void. The mechanism for reclaiming any such fees paid is through civil courts.

Before the Northern Ireland Assembly was dissolved, a range of further interventions in the PRS were being discussed, with comparisons being made between developments made by the other devolved governments and Northern Ireland. The re-establishment of the Assembly has reanimated the policy development process with respect to the PRS, but proposals for future change have yet to be made public.

Policy issues

Although there have been evaluations of individual policies such as landlord registration in Scotland and selective licensing in England,⁹⁴ there has been no consideration of the range of policy issues which exists across the devolved governments. In this section we draw predominantly from our Stage 1 interviews with national organisations, amplified by our case studies, to consider the policy lessons which can be learned from the different approaches taken by the devolved governments.

By way of preface, one of the key points of our analysis is a recognition that each of the devolved governments is at a different stage in the development of their regulation of the PRS. So, for example, registration of landlords was introduced in Wales some nine years after Scotland, and a year after Northern Ireland (NI). Even if all other things were equal – which they are not – we would not be comparing like-with-like. What we can do is pull out key themes and consider how these play across the devolved governments.

Registration and licensing

Key policy choices are made in the selection of type of scheme. Two types have been used: registration and licensing. Registration is of the person – the landlord or their agent, and includes details about the property. It can be used as a device to monitor growth and decline in the sector and to provide information to landlords. An accurate view of the sector and how it is changing can, however, only be obtained if all qualifying landlords register and, where necessary, re-register.

However, there are data gaps across the devolved governments with landlord registration, in part because of the challenges in building the database. Stakeholders drew attention to the issue of non-compliance and the significant proportion of landlords that continue to operate outside the legislation:

Now we have over 45,000 landlords registered with the scheme and close to 90,000 properties registered. The last house conditions survey that was done had estimated there would be about 135,000, 136,000 tenancies in Northern Ireland, so we still haven't captured them all. (Registration, NI)

⁹⁴ Lees, F. and Boyle, J. (2011), *Evaluation of the Impact and Operation of Landlord Registration in Scotland*, Edinburgh: Scottish Government Social Research; Lawrence and Wilson (2019).

We're 13 years in now and I guess if somebody had said to me back in 2006 when this went live that we'd still be where we are now which is still doing an awful lot of the administrative headaches that universal registration brings I'd be saying that was disappointing. I don't think anybody could claim that it's been a roaring success at this stage. ... there's still a significant minority of landlords who are operating outside of the margins of the system. (NGO, Scotland)

Certainly from our point of view, finding not just the correct people, who are the landlords, but also correct correspondence details is something that is incredibly time consuming, something that's very difficult, if you like, and probably is one of the things that takes up the majority, if you like, of our time, locating the people that we need to contact. (Rent Smart Wales)

Whilst national governments have provided local authorities with a range of new enforcement tools and schemes, there was a feeling that these schemes need to be combined with powers. For example, an issue arose over local authority officers' rights of access to properties to inspect them. This was particularly an issue in Scotland but was mentioned more generally across the UK. An enforcement and inspection regime clearly implies that there should be rights of entry, particularly where there is reasonable suspicion that there is a health and safety hazard in a property:

The difficulty we have is - there's two things. First of all, identifying where these properties are, because if the tenant doesn't come forward through what's called third party referral, then we won't know about it unless social work or the police or fire and rescue identify a particular problem. The other big problem we have is we don't have the legislative powers to enter these properties, so we can't just chap the door and say, 'We want to inspect this property.' We don't have that power. (Housing officer, Scotland)

An additional regulatory design failure highlighted by English local authorities was the ability for criminal landlords to operate "behind the schemes" via a letting agent if they received a banning order. Although from the point of view of the legislation someone else is formally in charge, these landlords can continue to "pull the strings" (Enforcement officer, England).

Scottish authorities also reported a lack of clear guidelines to inform enforcement decisions, particularly in relation to the application of the "fit and proper person" test:

Yes, you've got powers to register them or not register them but then if you de-register them you've got to be able to convince a court that that was appropriate, which is fair enough, but there's not a lot of hard guidelines as to this person's considered okay and this person wouldn't be considered okay ... we get to ask about convictions but there's nothing to say, just because somebody's got any particular convictions they're not going to be considered fit and proper. So it still becomes very much a bit of a judgement on how to make that decision (Landlord Registration, Scotland).

In Wales, a systems-based approach has been taken to deal with the issue of a lack of information on those who fail to register:

We also work with the National Fraud Initiative. We have coded our data to the National Fraud Initiative database. They cross-tabulate that with information from local authorities in regard to Council Tax and Housing Benefit, and then they provide us with a return, which is a mismatch of potential properties that are rented out that actually haven't been registered with us. (Rent Smart Wales)

This approach rests on the assumption that while a landlord might fail to comply with the licensing regime, either they or their tenants are complying appropriately with other administrative systems. But if non-compliance with such systems is correlated then that would constrain the scope for cross-referencing between systems to expose potential non-compliance with a licensing scheme.⁹⁵

The amount and level of information distributed to landlords varies across schemes. Registration can be used as a self-certification device which also provides information to landlords about their obligations. The process requires applicants to confirm how they comply with their legal duties. In Scotland, there was a feeling that bringing these obligations to the fore within the registration process was improving awareness about landlord responsibilities:

There's been a change to the information that landlords have to provide at the application stage⁹⁶, so they're now, instead of just ticking a box to say "yes I comply with all of the legislation", they're guided through all of the key things to say "have you done this?", "have you done that?", "have you done the other?" and I was actually really shocked how much that is flagging up people not doing it. They've just been blindly ticking a box and saying historically "yes I do it", but they haven't been doing it. So that's made a really positive difference in terms of making people aware of their obligations and getting some of them to pull their socks up where they previously just hadn't been doing really vital safety checks and things like that on their properties. (Landlord Group, Scotland)

Key stakeholders in Scotland however reported that not all local authorities are making use of the registration scheme to share information and communicate with the sector.

Although registration schemes can be passive in the sense that they can simply require the landlord or agent to register on a database for a fee, some schemes also require the landlord or agent to fulfil certain criteria, usually of being a fit and proper person. This allows for landlords to be refused registration or to be deregistered subsequently. Previous evaluations show unevenness in the enforcement of such criteria, with some local authorities adopting a light-touch approach when assessing a landlord's eligibility.⁹⁷

I think this is partly a volume thing ... it's part a cultural thing, maybe we'll come to this later on, but landlord registration culturally, it depends where it's come from within a council service context. If it's come from a kind of environmental health licencing regulation type of point of view that is not that close to a customer service approach to things, to put that diplomatically. (NGO, Scotland)

Whilst enforcement of the registration scheme can occur in response to tenant complaints, some local authorities in Scotland are undertaking random checks of properties to assess declarations of compliance. One of the key themes that emerged across all devolved governments was the different practices of enforcement among local authorities. This is explored in chapters 4 and 5 of this report.

Registration schemes with fit and proper person criteria and property inspections blend into licensing schemes, which are similarly concerned with the enforcement of standards. In this sense, the distinction between registration schemes (passive) and licensing schemes (active) tends to be blurred and the labels questionable. However, licensing schemes are often concerned not just with the person but also the property. This is a key feature of the licensing of HMOs, which pose particular risks to tenants in terms (for example) of fire hazards. It is notable that HMO licensing is a consistent theme across the devolved governments, and that the designation criteria used are similar. These schemes are afflicted with the same types of data gaps as registration schemes, with a proportion of landlords failing to comply with the regulations:

⁹⁵ One stakeholder suggested, on the basis of experience, that this is a relevant issue in trying to use tax records to identify landlords operating outside of a registration/licensing: landlords who seek to avoid licensing their property are also likely to be engaged in tax evasion. This did not emerge as an issue in our case studies but would justify further investigation.

⁹⁶ These changes came into effect on 16 September 2019 under the Private Landlord Registration (Information) (Scotland) Regulations 2019

⁹⁷ The 2011 Scottish evaluation demonstrated showed that several local authorities had adopted a 'light touch' approach, reviewing only those where: previous convictions are disclosed; complaints have been made; there is a history of involvement with the landlord; or the landlord is on a 'review list'

The good thing about licensing is it should create a level playing field, but it only works if there are not landlords – and I know that they exist – operating entirely under the radar. I know that there are a lot who just never registered, so then what do you do? The council has to track them down. You can do it partly with an intelligence-led model, but then you need some really good officers. (NGO, England)

Equally, licensing can be used to educate those involved in managing a rented property – as in Wales, where there are mandatory training courses prior to a licence being granted. Licensing can also be used to target particular areas or types of properties, as in selective licensing in England. A particular issue with the latter type of scheme can be the low likelihood that a property will be inspected or that it is determined that certain documents (such as a gas safety certificate) are in place before a licence is granted. This means a licence could be granted to a property which is (say) unsafe and/or in breach of the HHSRS. This can lead to scepticism among some stakeholders directed not at the principle of licensing but at the way it has been implemented in some areas:

Licensing's ... a bit of a sham ... Because it gives tenants a false sense of security. They're moving into a property that's been issued with a licence. That property, there's a 90% chance, probably higher, actually, that it hasn't been inspected. So it's getting a certificate that on the tenant's side tells them that it's safe when actually there's been no activity undertaken to demonstrate that it's safe. (Landlord Group, England)

From our case studies it is evident that registration and licensing schemes were seen as offering benefits in terms of raising landlord awareness, increasing compliance, and providing an understanding of the private rented sector. Yet these benefits are not inevitable: there are important design and implementation issues that need to be dealt with before such schemes can deliver. Our interviews identified a number of areas in which existing schemes, as currently implemented, are not fully realising their potential.

National and local

The other vector of policy choice is whether to have a national or local scheme. England has the only local licensing scheme, but it is notable that Scotland has certain local schemes (EEAs and rent pressure zones⁹⁸) which, whilst not being licensing schemes, have similar elements of control. Scotland, Wales and Northern Ireland operate national schemes, with national bodies undertaking the management of the scheme in Wales and Northern Ireland, but local authorities responsible for the national scheme in Scotland. Here, we focus upon how the nation and local levels interact and make two key points about this interaction.

First, national schemes are relevant at the local level where, for example, the local level has enforcement powers and requires information about the landlord. However, here, there can be communication issues around what data can be accessed and for what purpose. This was an important point made by our Northern Ireland case study, where data sharing restrictions significantly impacts on local authorities' ability to use the data to understand the sector, communicate with landlords and target enforcement action. The local authority felt the sole purpose of the scheme was to check if the landlord was registered or not and that it carried little benefit at a local level:

Interviewer: Does the registration scheme, at all, help in giving you a bit of an understanding of where properties are and what the sector looks like ...

Respondent: To be honest, we wouldn't be using the data off that for that purpose. ... There are exclusions on what we can use it for. We, basically, just can access the Landlord Registration Scheme just to determine if, you know, the landlord of a property has registered. That's it ... That is part of our duty, obviously, to check that the landlords are registered, but we're not really allowed to use that data to contact them other than to check that they're registered ... There are so many restrictions in it, it's only to check if they're registered, it's not to use their [details] or anything like that, or to do any profiling of where most of our rented properties are. It's very restrictive as to what we can use it for. (Environmental health, NI)

⁹⁸ Case study participants however reported that this is virtually impossible to put into practice.

On the other hand, in Wales, the national registration scheme (Rent Smart Wales (RSW)) and local councils have a memorandum of understanding (MOU) and data sharing agreement in place. The MOU describes the role and processes both RSW and the councils need to follow and the payment arrangements. Anything councils do for RSW, they are reimbursed for. Local authorities were said to be the “eyes and ears on the ground” for RSW, and there was a system of what was described as “service requests” in place which operated both ways – the national scheme would request detail from the local authority in relation to a landlord or agent, and the local authority could provide information to the national scheme about a particular enforcement issue which the latter could then take. That service request scheme built on already existing relationships which had developed among environmental health directors, who met to agree an approach, share best practice, and participate in an expert panel on housing.

Secondly, there is a question about the relationship between individual governments and local authorities. There is, sometimes, an assumption that national governments set a framework and then operate passively. Such an assumption is challenged by the existence of good practice guidance, as well as ongoing scheme evaluations across the devolved governments.⁹⁹

In Scotland, our case study authorities discussed the “direction of travel” of the Scottish Government – regarded as shifting from a “light-touch” approach to being more enforcement-oriented – as a determinant of their own approach and organisation. Some authorities hoped to move towards more tough enforcement action following this change in focus (see chapter 4 for discussion of the drivers of enforcement strategies and approaches). In contrast, in Northern Ireland, where the registration scheme retains its original “light-touch approach”, participants reported limited enforcement or monitoring activity.

Civil wrongs

One significant shift in policy and practice has been away from traditional forms of prosecution by the enforcement agency (be that local authority or other government body). In each jurisdiction, there has been a shift towards financial penalties, levied by way of a civil penalty (England), rent penalty notices (Scotland)¹⁰⁰, or fixed penalty notice (Wales and Northern Ireland). One reason for this shift may have been a concern that traditional lower level criminal courts did not understand the seriousness of the issues, or perhaps prosecutions took too long. What is different, however, is the maximum amount of such a penalty, which ranges from £250 in Wales to £30,000 per offence in England. The level of penalties in England is calibrated such that they could “break the business model” of a landlord, thereby in principle providing a strong incentive to comply.

This research identified diverse views regarding the role and effectiveness of the new civil powers. Some local authorities in Scotland and England regarded civil penalties as a useful financial deterrent that could encourage compliance because landlords do not want a criminal record:

Again, dead simple, see, the ones that hurt them financially, they are the most effective tools. Threaten to fine them and charge them, it's not always effective but the ones that contain real financial penalties tends to work. Usually before anybody loses anything, which is good. (Registration, Scotland)

I think if I look back it's probably one of the best if used properly because it's an instant financial impact and the landlord gets a shock, especially the ones who don't understand the risk. When you hit them with that, next time they don't do that. (Enforcement Officer, England)

⁹⁹ Echoing findings from previous evaluations our findings suggest that, while recognising local regulatory practice needs to be tailored to local context, there is nonetheless a need for more best practice guidance and information, covering for example, the development of enforcement policies.

¹⁰⁰ Rent Penalty Notices are used as an alternative to a report to the Procurator Fiscal. Currently these can only be applied where the landlord has failed to register, although there has been some suggestion that they could be used more broadly, for example, in relation to property condition.

In England and in Northern Ireland there was, however, some scepticism that financial penalties were in general use. One key stakeholder noted that, in England, “information requests show the vast bulk of local authorities don’t have an enforcement policy in place which means they can’t use those powers”.

It is important not to regard the imposition of a civil penalty or fixed penalty notice as a snapshot; it is part of a process, which includes its collection by the authority. A penalty that is levied but not collected is an inadequate one, and does not do justice to the often considerable amount of work that has gone in to the decision to issue the penalty in the first place. In some cases, it will be necessary to go further in the event of non-payment, and, with larger fines, apply for further enforcement of the penalty (including, for example, applying for a charging order against the property itself). Reflecting findings from the review of the selective licensing regime, case study authorities in England reported difficulties in recovering the financial penalties levied, and the costs incurred in doing so.¹⁰¹ As a result, civil penalties were regarded by some participants as an unreliable source of income.¹⁰² One key stakeholder reported that local authorities in England are only collecting approximately 25% of the penalties they issue.

Our research also identified a general reticence on the part of authorities in England to publicise these actions because of concerns that landlords will regard financial penalties as bureaucratic self-serving behaviour: that they are being levied by authorities simply to raise revenue. The MHCLG’s claim that the deterrent effect of civil penalties will be achieved informally¹⁰³ is somewhat problematised by the large number of single landlords operating in the sector. Publicity of such activity may therefore still be desirable. Our online research identified one example where this type of publicity occurred on an anonymous basis.¹⁰⁴

Our findings suggest that the effectiveness of rent penalty notices in Scotland may be undermined by the introduction of Universal Credit (UC). The 2011 national registration evaluation reported that in most cases where the penalty is applied tenants are on housing benefit; this shields them from the stress and vulnerability of withholding rent from their landlord. Prior to UC, the Housing Benefit department would work with the landlord registration scheme to suspend payment of the rent. However, under UC the tenant will be responsible for requesting benefit suspension; one local authority was concerned that:

... if that reduces the effectiveness then we may spend more time in court and it may prove more difficult because the prerequisite of everything is someone needs to be able to identify the landlord ... we had it working so brilliantly for housing benefits. It was so slick, it was so easy and so effective in dealing with the problem and now it’s like they’ve just taken away the best, or we feel as though we’ve lost the best, tool we had. But hey. We’ve not experienced it yet but we feel we know it’s coming. (Registration, Scotland)

Legislative development

Participants in England and Scotland emphasised that legislative developments addressing the PRS tend to be piecemeal and disjointed. New legislation has generally focused on one specific problem or set of problems and can be overly complex or contradictory:¹⁰⁵

The other one I find, I think there is a bigger issue around the legislation itself in that because of the explosion in the private rented sector, we have seen almost legislation thrown at it, and there has been no sort of strategic approach to that ... [I] mean we struggle with the Housing Act itself because it’s quite an old piece of legislation. Does this bit apply or does that? There is some sort of consolidation of everything needed. But I mean that’s a massive piece of work nationally (Enforcement team, England).

¹⁰¹ Lawrence, S. and Wilson, P. (2019) *An Independent Review of the Use and Effectiveness of Selective Licensing*, (For MCHLG) Accessed 9/7/19).

¹⁰² The review of selective licensing in England also highlighted the potential problems associated with assuming a revenue from civil penalties to support a licensing designation if penalties could not be recovered or if compliance was higher than expected. Pg.51

¹⁰³ MHCLG (2018) *Civil penalties under the Housing and Planning Act 2016*. Statutory guidance (Accessed: 10/6/20)

¹⁰⁴ <https://www.lettingagenttoday.co.uk/breaking-news/2020/1/huge-18-000-penalty-for-landlord-who-failed-to-improve-property>

¹⁰⁵ This echoes findings reported in J. Rugg, and D. Rhodes, (2018) *The Evolving Private Rented Sector: Its Contribution and Potential*

Reflecting longstanding concerns,¹⁰⁶ participants criticised the law governing the PRS as fragmented, opaque and lacking strategic focus. Calls were made for consolidation and simplification of the law as a means of facilitating more effective enforcement practices:

I think there's six or seven different pieces of legislation – and one of the problems we have is reconciling all these bits of legislation. Instead of having one Act of Parliament that clearly sets out what the powers of enforcement are and what potential breaches there might be ... I think there has to be a more realistic perspective and I also think that central government need to join up their thinking ... to cut a long story short, I think the whole private sector housing legislation framework needs to be looked at again (Housing Strategy Officer, Scotland).

Trading Standards (England)

The law as it currently stands makes it extremely difficult for trading standards in England to successfully use responsive approaches in their regulation of the PRS. Civil penalty charge notices can only be served against the legal entity which owns the business, which in most instances is a limited company without there being any liability on behalf of directors running the agency. If/when the local authority is successful in levying a civil penalty - which according to legislation is the standard course of action for a first offence¹⁰⁷ - the agency can simply dissolve and restart under a different name, with the local authority then having to begin the whole process again:

If you want the enforcement services to be more effective and robust about dealing with rogue letting agents, property management agents, then really you need to give us a set of tools that allows us, not only to go after the legal entity, i.e. the limited company, but it also allows us to charge at the same time a sole director of that limited company because it's nobody else that's operating that vehicle (Trading Standards Director, England).

Two-tier local authorities (England)

There was a feeling among some case studies that insufficient attention is being given to the specific experience of two-tier authorities. Difficulties arise where enforcement responsibilities fall across both the district and the county council (e.g. in relation to having an EPC and enforcement of MEES):

So the government have introduced a bit of legislation that said you have to have a bit of paper and that's trading standards in a two tier authority and then a second bit of legislation that says oh and by the way that bit of paper has ... to reflect that the house is a certain standard of energy efficiency and that's someone else who enforces that's district councils. ... this was all a bit of a mess because they weren't even particularly clear who did what and where ... it's all well and good saying in a bit of legislation it's got to be a minimum energy performance standard if no one's got that bit of paper on which it should say it in the first place. (Trading Standards, England)

Under these circumstances there is clearly scope for confusion and room for under-performance as a result of inadequate communication or coordination. One case study authority approached this issue creatively, with the county council establishing appropriate delegations so that the enforcement responsibilities would lie with the districts who are able to put in their own procedures.

As explored later in this report, one of the benefits of a housing strategy is the potential for thinking about PRS issues holistically and several participants highlighted the complex partnership working which is required to make a success of enforcing the legislation. This poses additional challenges for two-tier authorities:

It has quite a wide partnership but the difficulty is, how do we impact on the private rented sector to act as trying to make a meaningful difference given the complexity of the system working across [many] different areas with [many] different sets of rules, linking back into a city ... and then working with NHS and everybody else to try and deliver some of that. It gets really confusing and difficult to even get simple things done. (NHS Partner, England)

¹⁰⁶ Marsh and Gibb, The Evolving Private Rented Sector

¹⁰⁷ Criminal prosecution is only available for the second offence at which point there is general liability for directors.

Our literature review confirmed that issues associated with multi-level governmental structures are generally absent from discussions on enforcement in the UK PRS:¹⁰⁸

When you read lots of policy documents that come out, it almost feels that it's been written for a Metropolitan Borough or a unitary or a city and doesn't very often take in some of unique features – [of] the two tier system (NHS Partner, England).

Calls that have been made for a wider sharing of best practice¹⁰⁹ are therefore all the more relevant in this context.

Short term funding

In England, there has been some investment at a national level in tackling rogue landlords. This includes investment of £4million in the “tackling rogue landlord” fund. This type of approach to addressing the issue attracted criticism: the timescale for applying was extremely tight; the funding was generally short-term and for particular projects; and the limited money had to be spent within a certain very brief period. These characteristics mean that this funding cannot easily contribute to a robust strategic approach, which will no doubt be particularly troubling to policy makers:

It funds some additional projects we're looking at and some ideas we might have, so this year we've got 38,000 and one of those is to improve our website. We'll see an improvement and some additional money coming in, but I don't think it helps you to think about things more strategically and how you might invest that and there's some limitations on how that money can be invested as well, so you can't use it, for instance, to fund your existing establishment so if you want to bring in additional enforcement officers, you've got to do it on an agency basis. (Head of service, England)

Summary

In this chapter we have considered the different ways in which the constituent countries of the UK have developed their legislation towards the regulation of the PRS, as well as issues which have arisen in its practice. The central policy lessons are that:

- The approaches have been different, and sensitive to local contexts, although the menu of options is quite limited.
- Registration and licensing schemes create new areas for landlord non-compliance, and different approaches to inspection of properties across the devolved governments and between local authorities.
- There are significant issues around data sharing where there are national schemes, although these were resolved in Wales by a memorandum of understanding between Rent Smart Wales and local authorities.
- The new civil regimes of financial penalties have created new issues around the variability in the use of the penalty and around its collection. Particular issues have arisen in Scotland with Universal Credit because of the link between the financial penalty and the tenant withholding rent.
- The existence of two-tier authorities in England, and the awkward distribution of responsibilities between them, means that there is a need for a more streamlined approach in organising those responsibilities. This can be resolved locally, but national guidance would be welcomed.
- Short-term funding streams have proved problematic for local authorities and do not contribute to the kind of strategic approach which should be developed.

¹⁰⁸ The following recent reports make no mention of two-tier local authorities: Lawrence, S. and Wilson, P. (2019), *An Independent Review of the Use and Effectiveness of Selective Licensing*, London: MHCLG, MHCLG, [Rogue Landlord Enforcement: Guidance for Local Authorities](#) (Accessed: 11/6/20), Housing, Communities and Local Government Committee (MHCLG) (2018) *Private rented sector: Fourth Report of Session 2017-19*

¹⁰⁹ Lawrence, S. and Wilson, P. (2019), *An Independent Review of the Use and Effectiveness of Selective Licensing*, London: MHCLG

4. Enforcement strategies and styles

Local authorities and enforcement officers decide how laws governing the UK private rented sector are implemented on a local level. Recent quantitative studies on the prevalence of formal enforcement activities¹¹⁰ are valuable but they tell us little about these local decisions or about their implications for levels of compliance. Little is currently known about the contextual factors that affect the development and operation of a local authority's enforcement strategy. Drawing on findings from case studies with 13 UK local authorities, in this chapter we explore the variations in local authority enforcement strategies and their officers' enforcement styles in their day-to-day interactions with landlords and letting agencies. We also identify and discuss the key drivers which underpin these decisions and activities.

Whilst each UK jurisdiction has its own national approach to regulating the sector (see chapter 3), the practicalities of enforcement involve certain key choices that are relevant to any kind of environmental regulation. On a strategic level this covers decisions about the frequency of inspections, groups to target for inspection, the regulatory tools that are prioritised, the amount of time and effort given to formal or informal enforcement activities, and the relative importance of this area of activity within their broader portfolio. This chapter considers these issues in relation to the UK as a whole but makes key distinctions between the four nations where appropriate.

Enforcement strategies

From the analysis of our case studies we identify at least four types of strategies currently operating in the sector: i) light-touch approaches, ii) hard-line approaches, iii) compliance-focused approaches, and iv) creative approaches. We discuss the characteristics of each approach in turn and identify the key drivers shaping their adoption.

Light-touch approaches

Identifying regulatory breaches is a key aspect of enforcement. This can either take place through reactive work, responding to complaints/communications from tenants, or through proactive inspections to identify issues. Although reactive work is part of the approach adopted by all local authorities, three local authorities engaged primarily in reactive activities and generally made little effort to initiate inspections to identify non-compliance. Officers told us any enforcement activity tended to be 'a bit ad hoc' rather than targeted or planned. Where inspections did occur, there was also evidence that regulatory breaches were not always followed up with enforcement. These practices occurred despite an awareness of undesirable behaviour existing in their area:

We're aware that landlords who have a reputation for having substandard properties, that kind of thing, and yes, I would say that they do operate. To what extent? As I say, it's down to what you hear, and that's not necessarily that reliable. But they wouldn't be difficult to identify and go and check up on, and we don't have much of a strategy or policy for doing that. We just, sort of, turn a blind eye. (PRS Co-ordinator, Scotland)

To ensure compliance and address breaches of the law local authorities can take various types of formal or informal action. Informal enforcement activities include education, advice or guidance, persuasion and negotiation.¹¹¹ Formal enforcement activity covers legal action, for example, serving statutory notices, civil penalties or prosecuting landlords.

¹¹⁰ Simcock, T.J. and Mykkanen, N. (2018) *The Postcode Lottery of Local Authority Enforcement in the PRS*, Manchester, UK, Residential Landlords Association, (Accessed: 7/4/20), Generation Rent (2017) *FOI local government enforcement 2017-18* (Accessed: 7/4/20).

¹¹¹ Some literature suggests that enforcement approaches should be considered as positioned on a spectrum from retreatist, at the minimal end, to conciliatory, flexible, then perfunctory, and legalistic approaches at the more extensive end. For example, see Hutter, Variations in regulatory enforcement styles.

Local authorities adopting a light-touch approach were unlikely to make use of formal powers and were more likely to adopt a 'retreatist' and accommodating style when dealing with the sector.¹¹² A retreatist mode of enforcement is defined as one in which "officials avoid hard choices ... postponing decisions, or generating meaningless paperwork that creates only the appearance of regulatory enforcement".¹¹³ An accommodative approach may be characterised by enforcement strategies that are highly unsystematic that may be awarded little overall priority relative to other local authority activities.¹¹⁴ In these areas formal action was exceptional and was generally reserved for the most extreme cases. Stakeholders and sector representatives consulted as part of this study reported that this approach would appear to be relatively commonplace in the UK PRS.

Officers in these authorities primarily seek to gain compliance through persuasion or providing landlords with information on their responsibilities. This type of approach has also been labelled as an "extreme advise and persuade strategy".¹¹⁵ Whilst participants told us that a more informal and personal approach was often effective, it was not entirely clear if or when the response would be escalated if compliance was not forthcoming:

It seems to be more of a soft approach here for sure, there's no doubt about that, has been since I started. I think there's even something in the guidance that talks about soft touch, so enforcement isn't massive at all ... it's seen more of an education rather than, you know, a slap on the wrists. (Enforcement officer, Scotland)

These local authorities often reported being pro-enforcement and willing to apply sanctions where necessary. However, in practice, there was limited use of prosecutions, civil penalties (where relevant), legal notices or other formal remedies. In considering their written housing or enforcement strategies, at times a 'strong-on-paper' but 'weak-in-practice' approach became apparent.¹¹⁶ One Scottish local authority in this category had carried out an in-depth research study to understand the local housing market and, as in the other case studies, reported area-based differences in the PRS, with polarised markets. Like many of the housing strategies reviewed as part of this study, theirs had been developed to reflect changes identified in the sector and included important detail about improving standards in the sector. However, as one team leader of this council admitted, "we were maybe a bit passive after the document was produced". This disparity between rhetoric and reality was also highlighted by a key stakeholder in England:

Then there are the local authorities that want to pretend that they're doing something and they pretend that they've got this big stick and they're whacking the private rental sector, whereas in reality everyone knows on the ground that they're not and it's a charade. (Landlord Group, England)

One local authority which adopted a light-touch approach admitted that they lacked a strategic approach to managing the sector. This was a criticism made of local authorities by key stakeholders across the four nations. These councils rarely have PRS enforcement policies and tend to rely on a central regulatory enforcement policy which may not be easily accessible to staff in a range of departments. In these authorities there will likely be little consideration given to aims, objectives or outcomes associated with managing the PRS:

Someday in the future, whether I'm there or not, it is probably something that should happen, a more planned approach and a more planned look at the whole private rented sector but, as I say, we're just at the moment toddling along reactively. There definitely would be scope to change our approach but just at the moment and for the last few years, I just haven't had the number of staff to do that. (Environmental health director, NI)

¹¹² May and Winter, Regulatory enforcement styles and compliance.

¹¹³ Kagan (1994) cited in L.K. Mcallister (2009) 'Dimensions of Enforcement Style', Legal Studies Research Paper Series.

¹¹⁴ May and Burby, Making sense out of regulatory enforcement

¹¹⁵ Gunningham, N. (1987) 'Negotiated Non-compliance: A Case Study of Regulatory Failure', Law & Policy, 9: 69–95.

¹¹⁶ Braithwaite, J., Makkai, T. and Braithwaite, V. (2007) *Regulating Aged Care, Ritualism and the New Pyramid*, Cheltenham: Edward Elgar.

The paucity of formal enforcement activities has previously been highlighted across the four nations.¹¹⁷ However, in this study local authorities adopting a light-touch approach also rarely carried out proactive compliance-focused activities such as advice, training, newsletters or landlord forums. Where these actions did take place, they were highly unsystematic and generally delivered in a sporadic manner. Informal activity typically took the form of ad hoc communications with individual landlords: for example, in response to a tenant complaint.

The findings from the case studies illustrate the key reasons why authorities may fall into a light-touch or retreatist style of dealing with the sector. As discussed in the previous chapters, concerns have been raised about a lack of resources significantly impacting on the effectiveness of regulatory mechanisms across the UK PRS.¹¹⁸ Cuts to local authority budgets have resulted in a long-term gap between the availability of resources and demand for their services. The impact of this can be seen reflected within PRS enforcement strategies, where inadequate resources operate as a significant deterrent to carrying out proactive activity and formal enforcement:

There are people out there who don't know just their general rights ... I suppose, personally, I would like to be able to help people more and signpost them more. More than, just, what our statutory duties are ... there's no money in the budget to do anything, really, outside of the ordinary, and there's no time, and there're no more staff coming. We're just going to be dealing with reactive calls, firefighting. (Environmental health, NI)

As was repeatedly highlighted by participants across all the case studies, "resources" refers not simply to money, but also to the skills and capabilities of staff available. In short, in local authorities adopting a light-touch approach there are insufficient staff with the right training available to do the necessary work.

Two participating Scottish local authorities in this category had only one officer who was responsible for carrying out enforcement under the national registration scheme and in relation to any proactive activity (if there were to be any). These councils also operated in areas with large rural communities, where carrying out inspections and face-to-face compliance-focused activities across a large dispersed and remote geographical area posed further challenges:

Because of the geography where we are, we can't usually go and visit but quite often the landlords aren't local either, quite often they've moved for jobs and things like that ... We have tried to do some workshops and things like that but again, the geography here, it's difficult to get a reasonable number of people in one place to do presentations or give training (Registration team, Scotland).

The predominant type of problem presented in these authorities was also a key factor in shaping the approach adopted. Intentional criminal behaviour was generally believed to be less common than in larger urban areas. Whilst, as noted above, in one case this assertion was based on research carried out to inform the strategy, in the other two authorities this belief was based solely on tenant complaints received. Yet, as vulnerable tenants are significantly less likely to approach their local authority (see chapter 5), it is highly likely that this approach is not fully capturing the extent of non-compliance.

The local authorities in the light-touch category could also be distinguished by their internal organisation. A common challenge experienced by local authorities is service fragmentation. In two of the Scottish authorities, landlord registration sat outside of the housing team and alongside other licensing activities.¹¹⁹ There was evidence that this led to inefficiency, lack of communication and confusion regarding the delegation of roles and responsibilities.

¹¹⁷ Simcock, and Mykkanen, *The Postcode Lottery; Generation Rent* (2017) FOI local government enforcement 2017-18.

¹¹⁸ Marsh, and Gibb, *The private rented sector in the UK*

¹¹⁹ These observations do not apply to Northern Ireland where there is no "housing team". Functions in relation to enforcement of PRS regulations/fitness standards are undertaken by and located within Environmental Health Departments.

The inefficiency arose, for example, because landlord registration was unable to take advantage of the skills and knowledge of the housing team. A key stakeholder also emphasised that a reason for the lack of enforcement in some local authorities may be the organisation of the service:

In Scotland you've got 32 local authorities. They're all structured a little bit differently in terms of which department deals with the private rented sector, they certainly will operate differently in terms of their level of engagement with the private rented sector, and I don't know that there's as much sharing of best practice as there could be and sharing of resources as well. (Landlord group, Scotland)

Cultural factors also play a role in shaping the approach adopted. The findings indicate that certain UK local authorities do not consider themselves to have a significant role to play in educating or communicating with the sector. Scottish councils in this category did not make use of the registration scheme for this purpose:

Actually I was quite surprised when we did some roadshow stuff just before the summer to find out that a lot of councils are not even doing the basic stuff like regular communication with landlords which quite surprised me. Some are citing things like GDPR as a problem, but it's a cultural thing about not seeing that as a part of their core task. (NGO, Scotland)

Across the case studies political will was one of the most important factors shaping the enforcement strategy adopted. In areas with a light-touch approach, local councillors showed little interest in formal enforcement and did not consider tackling poor housing standards or management practices in the PRS to be a priority area. It appears that in some areas elected members fail to recognise the scale and importance of the PRS in providing housing for a wide range of households. Councils in this category appeared vulnerable to political decision making and the anti-interventionist agenda preferred by elected members shaped their (lack of) enforcement activity:

It's a political environment and they [local councillors] are conservative of administration. A landlord is wealth creating. It's a business. Why would you want to have excessive regulation around a business? It's a philosophical thing. (Manager, England)

Another reason for not making use of the full extent of enforcement powers was caution about the effect of enforcement on landlord behaviour and on housing supply. This was particularly in areas affected by the impact of short-term lets where the council recognised their need for PRS accommodation, even if it is of poor quality:

I think one of the key things that we keep mentioning is how Airbnb ... is going to impact on the actual private rental sector. If you like that might drive a lot of these people out of the sector and if there's more regulations and requirements on the landlords, I think a lot of these people would leave the sector because it's not worth their while. (Officer, Housing services, Scotland)

Some stakeholders reported that the culture within some authorities has not kept pace with the changing nature of the UK PRS and that staff and councillors may not recognise their duty to private tenants because regulating the sector is a relatively new area of local authority activity.

Hard-line approaches

Some participating local authorities prioritised strict enforcement action against those breaking the rules by rigorously applying legal sanctions. This type of strict regulatory approach has identified in other contexts as a ‘deterrence’ or penal style of enforcement which assigns prosecution an important role.¹²⁰ In general, the official strategic approach of local authorities in this category did not embrace informal activities:

Okay, so our stance is on the whole to take a tough line ... I've been running this service for five years and when I took it over the enforcement officers were akin to social workers where they would get into lengthy conversations with landlords and tenants and act as mediator to try and get the properties repaired where the landlord would, excuse my French, take the piss and just string everyone along. I've stopped that. (Head of service, England)

This observation also suggests the scope for those in leadership roles to exercise significant influence over the organisation's stance. This was a theme that emerged in other case studies – examples of individual public leadership substantially shaping service approaches. For leaders to exercise this type of influence over the organisation's stance typically rests upon them being given the political support - or at least the latitude - to act.

These authorities reported a high number of prosecution or civil penalties. Effectiveness was generally conceptualised in terms of outputs, such as the number of civil penalties levied or the number of improvement notices issued. For this regulatory strategy the number of prosecutions is generally regarded as a sign of success and a job well done. Communicating these activities to the wider sector was a key part of the approach adopted.¹²¹

The council likes to be seen to be quite robust when it comes to dealing with rogue landlords and generally with our enforcement responsibilities. Again, I have to say ... we are quite good. We certainly do serve a lot more notices and take a lot more prosecutions than immediate neighbours. I think it is fair to say ... you know, we are quite hard. We are certainly a lot harder than neighbouring authorities. (Enforcement lead, England)

Whilst authorities in this category adopted somewhat different approaches towards inspections, all were to varying degrees proactive in identifying non-compliance. One local authority tended to be reactive to complaints but randomly inspected 10-20% of the properties in their selective licensing area.¹²² Another aimed to inspect all properties in their selective licensing area over the life of the scheme. A third was mainly reactive to complaints but also pursued landlords that historically had higher rates of violation or appeared to constitute a higher risk.

Where a hard-line approach was prioritised generally less attention was given to compliance-focused initiatives such as training or advice. These activities were only briefly mentioned in the interviews and, crucially, did not appear to form part of the overall strategic approach.

Our research identified the key drivers underpinning this approach. These included different types of problems to those experienced by light-touch local authorities, particularly in terms of high levels of criminality. There was also a belief that a significant proportion of non-compliance was the result of deliberate rule avoidance rather than inadvertence. They had a sense that a proportion of “ill-intentioned”¹²³ landlords or letting agencies were operating in their area and this necessitated a high level of prosecution to deter future infractions.

¹²⁰ Hutter, Variations in regulatory enforcement styles

¹²¹ This is a stance that has been noted in other regulatory contexts. See Hutter, *Variations in regulatory enforcement styles*

¹²² Although in this case study the policy was that if enforcement action was taken against a landlord, all of his/her properties would then be investigated.

¹²³ Baldwin, Cave and Lodge, *Understanding Regulation*.

These local authorities drew on different datasets to develop their approach to the PRS generally. Two carried out stock condition reports and consultation exercises whilst another commissioned an external survey of the sector. This survey illustrated certain issues relating to poor property condition, anti-social behaviour and problematic streets or areas, as well as adjunct issues around modern slavery, immigration and significant overcrowding. Strategies were developed to reflect these challenges and included key details about improving standards.

The strategies operated according to a belief that higher rates of compliance would be achieved through a deterrence-focused approach (see chapter 5 for further discussion). In some cases a move away from an earlier light-touch approach had occurred: it was considered to have been unsuccessful because high rates of criminality continued. The primary focus of these authorities was to identify and tackle criminal landlords by using their full range of powers:

We say to good landlords at the beginning we're not here to get you but we will take robust action against those that aren't playing ball and they're exploiting landlords as well as tenants because what we find is that a lot of those landlords with criminality are actually charging more for their rents than those that are responsible landlords. (Head of service, England)

Local authorities adopting a hard-line approach usually had large urban areas where the private rented sector comprised a significant proportion of the total housing stock; at 30%, 35% and 40% it was well above the national average. The private rented sector was a political priority area locally, and council members and local landlord and tenant groups actively advocated a tough enforcement regime. These third parties also viewed a high number of prosecutions as the primary measure of success of the enforcement regime:

It's political pressures particularly. We are a red authority in a sea of blue, and there is an expectation from members that we will take this hard-line enforcement approach, although perversely most of our senior councillors are landlords, which is always quite entertaining. (Licensing, England)

Views on the potential side effects of regulation on landlord behaviour among authorities taking a hard line approach contrasted strongly to those of agencies adopting a light touch approach. These local authorities saw themselves as having a role in policing the sector:

People say you'll see landlords exiting the market if you're taking this more robust approach on licensing and that's fine, let them exit the market. They don't take the property with them. That house will still be there and whether that becomes unoccupied or a more professional landlord takes it over and manages it, it's still there. Let's get rid of the people that can't manage their properties. (Head of service, England)

A key finding from the case studies is that some local authorities are moving – in the light of perceived weaknesses in relying on less formal approaches – towards hard-line strategies that place the use of criminal sanctions to the fore. Compared to those adopting a “light-touch” approach, local authorities in this category had a strong strategic approach and demonstrated high rates of formal enforcement activity. However, as explored in the next chapter, there are limitations and challenges associated with relying on a deterrence-focused style of enforcement as the primary means of regulating the sector. Hence, as we discuss in the next section, many local authorities adopt compliance-focused strategies.

Compliance-focused approach

We see that as part of this, like our strategic role to provide a lot of those links, to provide a lot of the communication, to provide a lot of the support. (Rent Smart Wales¹²⁴)

Some local authorities and Rent Smart Wales appeared explicitly to seek ‘a synergy between punishment and persuasion’¹²⁵ whilst prioritising a compliance-focused approach. Compliance-focused activities can be understood as measures that fall short of prosecution or other formal action.¹²⁶ Although these local authorities were open to using formal tools where necessary, the primary response was not to impose penalties but to help landlords comply. Participants emphasised assistance, support and co-operation:

We’re very strong on compliance, but the first point is trying to encourage landlords to bring their properties up to the standards ... so it’s a variety of things mainly to educate and help landlords, that’s our main role, rather than working against landlords, we try to work with landlords. (PRS Lead, Scotland)

These local authorities provided or facilitated access to a wide suite of community-based measures in order to educate and encourage landlords to comply with rules and regulations. This included accreditation schemes, individual action plans, landlord forums or events, advice provision, regular newsletters, online information (such as Facebook pages), free training sessions, and “landlord days”. Some of the Scottish authorities in this category had recently developed, or were hoping to establish, a dedicated advisory service which replicated the Private Landlord Support Officer project developed by Shelter Scotland.¹²⁷ These positions would focus on providing advice and information to landlords in the local area, with the intention of freeing up resources for enforcement officers to take tough targeted enforcement action where required.

Multiple compliance-focused initiatives were generally provided as part of an overall strategic approach. In contrast to situations where compliance activities are provided on an ad hoc or moderately facilitative level (e.g., only addressed towards a particular landlord), these initiatives would be delivered systematically and regularly and target the sector at large.

Authorities in this category approached inspections both reactively and proactively and some adopted a targeted approach with particular landlords or problematic areas (see chapter 5).

Although compliance-focused activities were prioritised, these local authorities would use formal approaches where necessary and appeared to adopt an insistent rather than a persuasive strategy.¹²⁸ As explored above, a light-touch approach could generally be characterised as highly accommodative and persuasive: it was not always clear if or when the response would be escalated. An insistent strategy, in contrast, is somewhat less flexible and, rather than “turning a blind eye”, there would be limits to what the local authority was willing to tolerate. Strategies that prioritise an insistent approach support their officers in escalating responses and increasing the pressure when compliance is not forthcoming within a certain period of time. However, the ultimate aim of insistent strategies is to achieve compliance. Local authorities in this category appeared to occupy a middle ground between the light-touch accommodative and hard-line deterrence enforcement approaches identified above:

I think our approaches were one where we liked to work with landlords in the first instance and definitely encourage them to do so but I think there comes a point where you end up having to enforce things and I don’t think as a team we’re scared to do that. Yeah, I think we’d happily prosecute for financial penalty if we had to and if the evidence was there. (Senior licensing officer, England)

¹²⁴ In this chapter, Rent Smart Wales is considered alongside the local authorities

¹²⁵ Baldwin, Cave and Lodge, *Understanding Regulation*.

¹²⁶ Reiss in Baldwin, Cave and Lodge, *Understanding Regulation*.

¹²⁷ Renting Scotland, Private Landlord Support Officer Project

¹²⁸ The compliance literature makes this distinction between insistent and persuasive strategies see Hutter, Variations in regulatory enforcement styles

The Rent Smart Wales enforcement officers who participated in our research emphasised that they still regarded compliance-focused activity as best practice. Yet they had also served 556 fixed penalties on landlords and prosecuted a small number for failure to pay the notice. Local authorities in this category also reported regularly issuing notices or civil penalties. Communicating this formal activity to the sector was a key part of the strategic approach; these authorities wanted to be seen as willing to apply tough enforcement action where necessary. However, unlike *hard-line* authorities, they did not regard prosecutions as a sign of success in and of themselves. Where few prosecutions were issued this was seen as evidence that less interventionist approaches were working:

We're always aware that courts and tribunals will immediately test how we performed there so we don't want to appear to be too hard on people. We want to appear to be offering them opportunities and things. I think the fact that the formal enforcement around these things is pretty limited given that we've got 40,000 landlords. It shows that the less formal approach that we're adopting is working. (Manager, Scotland)

These assumptions regarding how success should be defined and measured is one of the key factors underpinning the adoption of a compliance-focused approach. As explored in chapter 2, recent research on enforcement in the UK PRS focuses primarily on formal action taken. Local authorities prioritising compliance challenged this tendency to conceptualise success or activity in the private rented sector solely in terms of formal activity:

Just because councils aren't taking convictions doesn't mean to say they're not doing an awful lot of hard work and getting an awful lot of compliance. It's just they're doing that through what we used to call affectionately in the sector as the 'Ways and Means Act'. You are ensuring that people get compliance by helping them through the process, by giving them time, support, etc., and that gets the compliance. (RSW, Wales)

The recent evaluation of selective licensing schemes in England emphasised that the number of prosecutions, civil penalties, notices or inspections are not appropriate measures of success.¹²⁹ Among compliance-focused authorities, the goal of regulation was not to secure prosecutions, but to improve standards by achieving compliance. They considered working in collaboration with landlords to be inherently more successful than formal activity in reaching this goal. A key theme emerging from the interviews in these authorities was the view that landlords generally respond positively to local authority intervention, which in turn negates the need for further enforcement action. This was said to provide evidence that informal approaches are effective:

I do think it is difficult to tie the links in but the fact that when we engage informally it's fairly uncommon to have to move to any formal enforcement action, it shows that the approach is working in supporting and guiding people through it. (Solicitor, Scotland)

Some Scottish local authorities in this category had restructured previously distributed housing services into one integrated and co-located housing team. Bringing multiple related services into a single point of delivery was reported to result in increased efficiency, a shared sense of purpose and better outcomes for tenants:

I like to think now the officers have got a clearer focus on what we're looking for, that this is all about improved standards. I would not expect, that you might have got in the past, an officer going out maybe to do the property repair, but you're in somebody's flat, you're talking to him, "Oh, you've got to pay for common repairs there", but in the meantime, this is a private rented flat and there's no smoke detector, there's no this, and they wouldn't pick up on it. Now, when an officer's in, and when you're inside, you're expected to pick up and say, 'While I'm here, I'll have a look, just to make sure this meets with [the regulations],' so it's a more joined-up thinking. (PRS lead, Scotland)

¹²⁹ Lawrence, S. and Wilson, P. (2019) *An Independent Review of the Use and Effectiveness of Selective Licensing*, (For MCHLG)

Like many other areas across the UK, most local authorities in this category had a large private rented sector which has grown substantially over the last 10-15 years. There was a feeling that the size of the sector and the lack of available resources to carry out formal enforcement made it necessary to focus on compliance-focused activities:

You can imagine the volume if we are talking about 12,000 properties that need the standard improved over the next four years. That can never be done by enforcement it needs to be done through encouragement, advice, support. (PRS Manager, Scotland)

Authorities in this category viewed their role as that of an educator. There was a feeling that current understandings of PRS enforcement fail to capture the wide range activities adopted to ensure compliance:

You're an educator. And that's why one of the reasons why we keep the HMO advisory service running is that we want to be able to still do that and that if you talk to people and say, "What's your job?" Or "What does team do?", "Private sector housing enforcement." So it's almost like that's the wrong way of phrasing things in some circumstances. (EHO, Wales)

These findings indicate that some authorities that are active in the sector are adopting less coercive policies that focus on supporting the significant number of PRS landlords who may not be in full compliance. Tough enforcement action is reserved for the small minority of landlords who do not appear to be responding to informal actions or are wilfully breaking the law.

Creative approaches

Our findings indicate that some local authorities are adopting new or creative regulatory strategies to facilitate improvements in the PRS. Three of our case study local authorities can be placed in this category. Their activities are not mutually exclusive of the strategic approaches outlined above. One favoured compliance-focused activities and less-interventionist approaches, whilst another would use more formal approaches when dealing with regulatory infractions. A third was pro-enforcement but was prevented from using the full range of formal powers (including civil penalties) due to local opposition from councillors who preferred a light-touch approach. These local authorities are however distinctive in their understanding of the problem and possible resolutions, and their adoption of alternative regulatory techniques.

In a survey by Shelter Scotland, 93% of all Scottish local authorities reported that their strategic approach to the PRS focused solely on property conditions and regulating landlords.¹³⁰ Each of the *creative* authorities framed PRS compliance and their strategic priorities much more broadly. They situated the needs of private renters at the heart of a wider area-based strategy:

It's about trying to coordinate a neighbourhood management response, rather than just looking purely through, "This is a private rented property. What is this landlord doing or not doing?" It's much wider than that. It's also about that tenant, living in there, who may have multiple complex needs and has, potentially, just moved from another area and doesn't know [the local authority], which happens as well. (EHO, England)

One local authority addressed standards in the private rented sector by situating housing in the prevention element of an 'integrated care' NHS strategy. Another situated their enforcement strategy in a multi-agency, holistic approach that aimed to address not only housing, but also other issues that tenants would encounter. A third adopted a system-based approach that focused on wider housing and wellbeing outcomes. In each case study, building effective partnerships with a range of potential partners was key to developing a more coherent and holistic approach.

¹³⁰ Shelter Scotland (2019) *Where to Turn: A review of housing support and advice for private tenants in Scotland*

Several case studies drew on information regarding the characteristics of the physical stock for the purpose of developing their approach to the PRS generally, for example, by commissioning a survey of the sector. Creative authorities went further and drew on several additional data sets to target their community and tenant focused support. For example, one mapped NHS hospital admissions data and Indices of Multiple Deprivation data onto the housing conditions survey to gain a general idea of where the best and worst quality housing was located and the tenants most in need of support. This was used to help target enforcement activity and welfare support for tenants: for example, it facilitated getting the welfare rights team into those properties to ensure tenants were getting the maximum benefits to which they are entitled. An additional aim of this data initiative was to build support among local councillors by illustrating the incidence of poor standards in the sector:

I spend a lot of the time trying to influence the broader operating environment with colleagues and everybody else to try and develop an understanding of the levels of hazard for people living in our area ... Members are more in favour of doing things for health and wellbeing and you creep your way round to starting to be able to use the tools that you need to influence. (Housing manager, England)

Another authority commissioned a data analyst to carry out stratified population analysis to explore neighbourhood deprivation which was subsequently ranked into 6 categories. This data was used to focus their community engagement and development work on “hard to reach” parts of the community. A third authority used housing benefit data and complaints data to target inspections and meetings on tenants most likely to be vulnerable and least likely to ask for help. All creative authorities were proactive in delivering tenant focused support:

We are very proactive so a big part of our project is going out and knocking on doors with other agencies with police and fire and job centre and looking at a person holistically and trying to figure out everything else for them as well not just housing issues ... and we also take referrals from the other agencies who have gone out for a home visit and have seen things and have said look you really need to get involved ... we tend to get involved in the cases where people haven't approached us, don't know how to or are scared to or are very vulnerable and have lots of other complex issues, substance misuse or criminal behaviour, lots of other things going on in their lives apart from their housing problems. (Housing manager, England)

At these local authorities, the officers' role in inspecting properties would extend far beyond applying relevant legislation. When visiting they would seek to identify interrelated issues and provide support by, for instance, signposting or referring tenants to other organisations. In one case where inspections were carried out under the selective licensing regime, staff would simultaneously have an in-depth meeting with the tenants. Their focus would be on identifying and addressing all underlying or overlapping issues, rather than only dealing with what might appear to be the primary issue. Because they received training from a wide array of support organisations, local authority officers were able to draw on external services where needed:

We don't just go into a property now and look at bricks and mortar. We are looking at everything. Why is that child in this property when he should be at school? Why are there complaints of antisocial behaviour and noise? Is there some domestic violence? Where are the bins? Why have we got reports of fly tipping and there is waste in the yard? Has the tenancy not been set up correctly? It's kind of like that massive more holistic view we now take, rather than just looking at bricks and mortar. (EHO, England)

In each area working in collaboration with different public services was key in identifying and responding to issues in the private rented sector; conversely, the PRS team would also receive referrals from other organisations. These local authorities had strong links with school liaison officers, health visitors, adult social care, police officers, community groups, doctors and housing options services. Through training sessions, team meetings and informal conversations the PRS teams aimed to raise the profile of support and increase awareness of how to detect and report issues such

as poor property conditions, unlicensed HMOs and tenants in need of support. This activity served to improve referral arrangements across different public networks thereby minimising the chance that vulnerable tenants and/or those who are at risk of homelessness would ‘fall through the cracks’ of different services:

Well what we’re trying to do is, in terms of how different professionals, - welfare rights being one - can we almost give them some questions that would help reveal any issues? ... Between all the services we have, we have lots of contact with people and so some of it’s about trying to reduce the amount people go into people’s homes. So it’s trying to work with other services; but equally is then trying to say, well instead of the person continually ringing up, if we can between the local public sector organisations, gather that Intel, we can, with the person’s permission, do inter-departmental referral to improve the situation for the individual and to stop them having to tell their story ten, twenty different times over. (Housing director, England)

Each of these case studies adopted new models of integrated service delivery. At one local authority a multi-disciplinary neighbourhood management team was created as part of the selective licensing scheme. This team consisted of an anti-social behaviour officer, an energy efficiency officer, two environmental health officers, a technical officer and administrative support. Another local authority operated an award-winning multi-agency team covering trading standards, the police, immigration officers¹³¹ and DWP officers who were all co-located within housing services. Bringing these disparate teams together helped to create innovative solutions to tackling issues relating to trafficking, modern slavery and overcrowding.

These authorities operated with a different understanding of outcomes and what they were trying to achieve. Success also depended on the activity of other stakeholders and the strength of established relationships. Improving joint-working was a key objective of their services:

We have to be open to that and not just try to say “Well, we’ve been and inspected 50 houses. We’ve found some problems and we’ve dealt with it”. It’s not just about the housing. It’s actually trying to, in my opinion, highlight how we can all fit and work together better in a micro-area. (EHO, England)

Their activity was also informed by a homelessness prevention agenda and a desire to use resources in a more efficient manner, with better outcomes for tenants:

It’s almost led to lots and lots of other partnership working across the council, because they’ve seen the benefits and the strength in investing in just a few officers, embedded in the team, and what a difference it can make. We’re all struggling with resources, but if you push together and have that targeted evidence approach, you really can be effective at making a difference. (EHO, England)

The Localism Act 2011 (England) gave local authorities the power to discharge their duty to households accepted as homeless under the Housing Act 1988 by providing an offer of accommodation in the PRS. Although not all participating councils had formalised relationships with PRS landlords or regularly discharged their duty through the sector, several councils were beginning to consider what role the PRS could play in meeting their homelessness challenges. Some authorities in Scotland and England were concerned that tough enforcement action could have a negative impact on their ability to procure property from the PRS to meet this need. This sometimes contributed to a reluctance to take formal action. In the creative authorities the PRS was recognised as both a cause and possible route out of homelessness, and homelessness prevention formed a key focus of their overarching housing strategy:

¹³¹ Stakeholders consulted as part of this study raised concerns that multiagency enforcement operations involving the Home Office may further deter some claimants from reporting poor standards.

This project is about preventing homelessness, as much as going in and making sure that property is safe under the Housing Act. From a PRS perspective ... I believe, when you can try to combine all of the different elements, you're much more successful than, "Well we're going in to look at it under the Housing Act, then we'll pass it onto a homelessness team who will look at their circumstances." It's about making sure that you have the right mechanisms in place, I believe, to signpost people, to help people, and to know what the real issues are. It's not always what you think it is. (EHO, England)

Several authorities highlighted the importance of developing close working relationships with the housing options and homelessness teams as a means of dismantling departmental siloes that can pose barriers to effective working:

Yes. We work jointly, together ... So our side is in homelessness, so we will offer certain landlords incentives. But we will liaise with Housing Renewal to ensure that we're not on one side, providing a landlord with financial assistance, whereas the Housing Renewal Team are taking enforcement action, because that property is in a state of disrepair, or whatever. (Housing Options, England)

As noted in chapter one, an increasing number of vulnerable households now live in the private rented sector. We were given examples of how tenants' reluctance to complain or pursue their complaint had a negative impact on the local authority's enforcement activity. We explore this issue further in chapter 5. Creative authorities were distinctive in their attempts to address these issues in a systematic and structured way. Unlike most local authorities, whose strategic priorities are orientated towards property condition and landlord regulation,¹³² these authorities also focused more directly on the needs and demands of people living in the sector:

That's one part of licensing for us, and the monitoring, and making sure that landlords are doing all that, and supporting them. But then there is this huge element now of the people in the community, because they form one half of making this a successful intervention. (EHO, England)

The practices and approaches adopted by these local authorities suggest that their strategies are underpinned by a philosophy which regards issues of disrepair, poor standards or landlord behaviour as part of a wider picture. Poor housing standards are seen as a component of a more complex reality, with issues related to poverty, deprivation and tenant vulnerability comprising further key parts:

So it's how we try and approach that as a whole system approach to try and tackle some of those issues, the drivers of which, from the NHS side, from my perspective, it's more around general health, wellbeing, access to education etc. (NHS Partner, England).

Then it's not just about the housing, it's about the people and it's more about the health wrapping around everything ... so I call the staff that work in there "housing social workers". What they do is they go in and go, "What's fixed? What's broken? What needs fixing?" You've got a leaking roof, no hot water, heating's broken, right, "By the way, have you got the right benefits? Do you need a dentist?" (PRS Housing Manager, England)

Assembling the funding for these sorts of holistic approaches was not necessarily straightforward. It is not possible to, for example, build a holistic service for a neighbourhood subject to selective licensing using the licence fee income alone. It requires overcoming siloed thinking and drawing on budgets from elsewhere. There was evidence of councils adopting an entrepreneurial approach to building political support and securing additional funding to cover these activities.¹³³

¹³² Shelter Scotland (2019) *Where to Turn: A review of housing support and advice for private tenants in Scotland*

¹³³ The importance of a holistic approach to addressing housing problems and disputes has been addressed in the recent report by JUSTICE (2020) [Solving Housing Disputes](#) (Accessed: 23/7/20).

Enforcement styles

Enforcement styles represent the way in which inspectors and officers carry out their duties and relate to landlords and letting agents when enforcing the legislation “on the ground”.¹³⁴ Strategic decisions and positions do not wholly determine officers’ day-to-day actions and decisions. Given the wide array and complex nature of the situations encountered, staff inevitably have substantial discretion over the nature of their response and the type and amount of sanction applied, if any. Indeed, the MHCLG calls on local authorities to be responsive to the nature of individual transgressions.¹³⁵

If senior managers have confidence in the capabilities and judgement of their staff then they can be comfortable with explicitly delegating decision-making about how to respond to individual cases, particularly if robust reporting mechanisms are in place. This approach was emphasised in one of our *creative* authorities as a means of empowering staff. On the other hand, the inevitability of discretion means that a space opens up for individual officers to negotiate and challenge the strategic decisions and underlying enforcement philosophy adopted by their local authority. Decisions at the policy level to pursue hard or soft enforcement strategies do not always align with the opinions and activities of officers.

Some officers appeared to adopt a highly informal and flexible style of enforcement and would primarily seek to gain compliance through persuasion and education. Interaction with landlords and letting agents was characterised by helpfulness and relationship-building, with officers explaining the law in a patient and open-ended way:

I'm working with one landlord just now. He has 49 properties, none of them had smoke detectors, they've a couple of boilers that are a bit dodgy and a lot of people would be like “get it done, get it done, get it done”. I know that is technical and I know it's a safety issue, but you need to get the work done. But I've been working with this landlord for six months now and gradually he's doing it one by one and every time he gets another smoke detector, he sends me his certificate, but the best thing is he's communicating and it's now at the stage he phones me every week, just to say hello pretty much, but he's staying in touch which is all we ask for. (Enforcement officer, Scotland)

This approach seemed to be commonplace where local authorities prioritise light-touch strategies. A rejection of prosecution and civil penalties at a strategic level seems to almost make informal activity the choice by default, even if individual offices’ own stance was pro-enforcement. However, hard-line or compliance-focused approaches at the strategic level offer more scope for divergence between the organisation’s declared stance and the approach in practice. This can be the result of failing to back a hard-line policy rhetoric with sufficient resources to deliver on it, rendering the policy largely symbolic, but it can also be the result of a divergence of views and the exercise of discretion at the frontline.

A more informal approach is at times adopted because decisions are affected by taking certain pressures and risks into account as well as by officers’ personal views on whether deterrence or compliance-based approaches are more effective. Some officers believed collaboration to be more successful in changing behaviours or attitudes in the long run, even though the official position of their local authority was to be hard-line:

In practice, there is a lot of mixed approach but informal, nobody counts informal action ... nobody cares for informal action, and yet it is informal action that has a lot more – you persuade people better. You have a lot better result if you persuade someone to think differently than if you force them and that is the case with landlords. (Enforcement officer, England)

¹³⁴ P.J. May and S.C. Winter (2011) ‘Regulatory enforcement styles and compliance’, in C. Parker and V.L. Nielsen, *Explaining compliance: Business Responses to Regulation*, Cheltenham: Edward Elgar Pub pp.222-244. Pp.224.

¹³⁵ MHCLG, [Rogue Landlord Enforcement: Guidance for Local Authorities](#) (Accessed: 11/6/20)

The high levels of homelessness across the UK form essential context in which officers' decisions are negotiated. In recent years homelessness across the UK has significantly increased. The eighth annual Homelessness Monitor (England) indicates rising levels of rough sleeping, statutory homelessness, temporary accommodation placements, and hidden homelessness.¹³⁶ Officers cited risks to tenants - such as the threat of homelessness and illegal eviction - as key factors influencing their enforcement decisions:

The homeless problems that we've got, you know, and it's just getting worse. We are in that difficult situation where you have got massive homeless numbers, so is a roof over your head, or an unsafe roof over your head, better than no roof over your head? It's that difficult one. (Licensing Team, England)

Summary

Previous studies have demonstrated that regulators operate on a spectrum with deterrence- and compliance-focused activities at opposite ends.¹³⁷ These are not binary options and it is likely that many local authorities will engage in a mix of actions located at intermediate points along the spectrum. Our findings suggest that there are at least four archetypes of regulatory strategies currently operating in the sector, although it is likely that in practice many local authorities fall somewhere between them. Some authorities preferred strict measures and a hard-line approach, whilst others favoured non-coercive activities and a light-touch approach. As explored further in the next chapter, there are certain challenges associated with each of these strategies. Compliance-focused authorities treat the two approaches as complementary and seek to achieve a balance between them. Our study also includes examples of authorities that are thinking more expansively and systemically and, as a consequence, have adopted creative regulatory strategies. Their focus is not only on enforcement but on broader regulatory technique, including issues related to the wider system, inter-agency working and the needs of tenants.

By exploring the various factors which underpin the development of these strategic approaches, our study adds new insights on enforcement in the PRS. Regulatory approaches are not only based on pragmatic concerns about resource availability, but also on underlying assumptions regarding landlord motivations and effective ways of regulating the sector. The understanding of the nature of the problem and possible solutions, political support, geographical factors, how the teams are organised and configured, and how the local authority views itself in relation to the sector are additional key factor underpinning the approaches adopted.

¹³⁶ S. Fitzpatrick, H. Pawson, G. Bramley, J. Wood, B. Watts, M. Stephens, and J. Blenkinsopp. (2017) [The Homelessness Monitor: England 2019](#) (Accessed: 22/7/20).

¹³⁷ P.J. May and J. Burby. (1998) *Making Sense out of Regulatory Enforcement*, *Law & Policy*, 20(2)

5. Obstacles to effective enforcement and new regulatory approaches

Assessing the effectiveness of different enforcement strategies is notoriously complex. As discussed in chapter 2, the impact of regulation will depend on how people respond to that regulation, and those responses in turn depend on factors that will often be external to the activities of the local authority. It is therefore important to avoid overly simplistic assumptions about cause and effect.

The first part of this chapter explores the nature of obstacles that local authorities are facing and certain key issues associated with the enforcement strategies identified in the previous chapter. We discuss the challenges and limitations associated with relying exclusively on either cooperation or deterrence as the primary means of regulating the PRS. The second half of the chapter explores the extent to which local authorities are using alternative regulatory approaches.

The obstacles to effective enforcement

As noted in the previous chapter, some local authorities are moving towards a deterrence-focused strategy towards the PRS that places the use of formal sanctions at the forefront.

Participants had substantially different views regarding the effectiveness of formal action. Some of those favouring formal enforcement felt that sanctions could be effective in deterring future breaches of the law by the offending party. A more popular view was that widely publicised and visible enforcement action would have a ripple effect and prevent similar harm or behaviour from other landlords or letting agents:

I'm not afraid to go to court. [The local authority area] is a close-knit community, so you tend to find if you take a court case, other landlords get to know about it. That does have an effect. (EHO, Wales)

Authorities in our study publicised successful prosecutions for this purpose via social media and in local newspapers. Some also targeted the intended audience via a mailshot to landlords and agents (e.g. in Scotland via landlord registration, in England via the selective licensing schemes):

We publicise [prosecutions] hugely. It goes all over the place. You get a press release in the papers, we put it out in social media and effectively in a quarterly magazine that goes to every household in the borough so every house in the borough will see the name of that person and will see what they've done. It's a deterrent. (Housing Manager, England)

It was however recognised that determining the causal impact of publicising prosecutions is difficult. Some participants did not consider formal activity to be an effective deterrent but nonetheless believed that punishing criminal behaviour was morally the right thing to do and key to building a positive relationship with the sector:

I'm not sure that necessarily enforcement activities make non-compliant landlords start complying. I think with some of them it might, but I think it's also about supporting those landlords who are investing, and ultimately complying ... I think showing that there is a penalty for those landlords would show some level of support for the good landlord. (Team leader, Scotland)

Whilst, as noted in chapter 4, views about the extent to which non-compliance was the result of conscious criminal activity differed across localities, most local authorities felt there were some landlords and letting agents that would only respond to tough enforcement measures. The literature emphasises that some level of legal enforcement – although it is not clear quite how much – is essential in achieving compliance.¹³⁸ Our findings, however, suggest that there are several factors which limit the effectiveness of a strategy that is exclusively deterrence focused.

First, highly coercive instruments such as prosecutions require substantial administrative resources to be effective. A lack of resources, alongside other constraints, made it impossible for officers to adhere to a hard-line approach: several local authorities felt that they were only ‘scratching the surface’ of the problem (licensing officer, England).¹³⁹ Respondents spoke at length about the significant amount of time, money and effort involved in pursuing prosecutions, with some reporting that the necessary skill set was also lacking:

When it comes to the level of investigation that I'm talking about, to get the right person, to feel the impact of the offence and to tie them to the crime, which they have committed through somebody else, it is very hard ... those are the rogue landlords. Those are the ones that this law is meant to catch but it requires a lot of expert understanding of the law. It's very complicated. It's not as easy as we think ... so now we have officers who can do enforcement but only to a degree and it's just not enough. (Enforcement officer, England)

With our legal system here too, it takes so long. Even the simplest case gets delayed and delayed and you could be talking easily a year with a few adjournments before it ever gets to the door of the court. (Director, NI)

Under-reporting of poor standards by tenants, and the barriers this poses to identifying non-compliance, was discussed by numerous participants across the four nations. When tenants who did approach the local authority were informed that their landlord would need to be contacted, they would often withdraw their complaints or deny the local authority access to the property. Gaining access to properties to inspect them was a difficulty faced by local authorities across the four nations. Finding tenants who were willing to testify in court was another key challenge:

The problem is, the prosecution is only ever the tip of the iceberg. This is the thing, obviously, we don't want the opposition to know. But it's very difficult to actually get the evidence together for a criminal prosecution, because the first thing is you need a witness statement from a tenant, that's your evidence of the malpractices. So you need a tenant who's prepared to come forward, one, to give a witness statement, and, two, potentially to appear in court as a witness if challenged. (Trading Standards officer, England).

The likely reluctance of tenants to raise complaints due to a fear of retaliatory evictions or retaliatory rent rises is now generally acknowledged within the sector.¹⁴⁰ A lack of knowledge or awareness of rights or entitlements is another key issue; this was viewed as particularly salient among migrant communities. New migrants to the UK are more likely to reside in the PRS than in other tenures and often experience poor and exploitative housing conditions.¹⁴¹ Analysis of Labour Force Survey data shows that 76% of recent migrants who arrived in the UK in the previous five years are housed in the PRS.¹⁴² The survey also showed that migrants are more likely to live in overcrowded housing, particularly in London.

¹³⁸ R.A. Kagan, N. Gunningham, and D. Thornton (2011) ‘Fear, duty, and regulatory compliance: lessons from three research projects’

¹³⁹ Local authorities in England that operated a selective licensing scheme did report that the financial resources generated through fee-setting allowed for larger staff teams. However self-supporting schemes are rare and resources continue to limit their activity. For example, it is extremely unlikely that local authorities will carry out 100% property inspections. These issues are explored in depth in the recent review of selective licensing in England. See Lawrence, S. and Wilson, P. (2019) [An Independent Review of the Use and Effectiveness of Selective Licensing, \(For MCHLG\)](#).

¹⁴⁰ This has continued to be an issue in England even after the 2015 Deregulation Act. This act provides protection against retaliatory eviction where the local authority has issued the landlord with a formal notice. However, this protection only lasts for 6 months and action is only taken in certain cases of disrepair. In addition, other barriers may prevent the tenant from approaching the local authority such as lack of awareness of rights or fear of authority. See Citizen's Advice, (2017) *It's broke, Let's fix it*.

¹⁴¹ J. Perry (2012) [UK migrants and the private rented sector. A policy and practice report from the Housing and Migration Network](#) (Accessed: 23/7/20)

¹⁴² This can be contrasted to the average percentage living in the private rented sector among all foreign born (39%), The Migration Observatory (2019) [Migrants and Housing in the UK: Experiences and Impacts](#) (Accessed: 23/7/20)

Language barriers, poverty, a lack of awareness of council services, low housing aspirations, dependence on an employer or agent for accommodation, and a fear of public services or authority figures are key factors that mean this group are highly unlikely to approach their local authority and are especially vulnerable to exploitation, including from gangmasters or criminal agents. Research suggests this may have been exacerbated by the recent Rent to Rent legislation with some migrants reluctant to complain about conditions due to fear of being deported.¹⁴³

The people who are the victims in these situations don't go to councils. Quite often they're from countries where, bizarrely, the state is not a good thing. (Landlord group, England)

I think it is lack of understanding. It's also some people think landlords are helping them, nobody else will give them [a place to live]. They think the condition they live in isn't so bad. We think it's bad. To them, they probably come from – I don't know, they just don't see it in the same way. (Enforcement officer, England)

Tenants in London may experience difficulties in navigating the system due to variation in the adoption of selective licensing. People were reported to be often unaware of which council ward they lived in let alone whether a selective licensing scheme was in operation in that authority.

Deterrence theory claims that people will be deterred from breaking the law when legal penalties resulting from the breach and the likelihood of swift detection and conviction are sufficient to outweigh the gain associated with non-compliance.¹⁴⁴ The effectiveness of formal enforcement measures will therefore depend on court sanctions being sufficiently severe, which is, however, rarely the case in the PRS. Participants from across the four nations gave numerous examples of small financial penalties being imposed in spite of the serious adverse effects that a landlord's behaviour had or could have had on individuals:

He was singularly the worst landlord I've ever met. He was horrendous. We could probably find some of the press stuff about him actually ... I think my staff attended court five times during that two years and at the time it was adjourned and they were messing about and all the rest of it and he was fined £110 against a maximum of £50,000 ... You're just hitting your head saying where is the deterrent there? It's not a value because we don't get any money from that ... If that becomes public, if people realise that's the worst that can happen to me, why bother doing what the council ask? (Manager, Scotland)

Stakeholders reported that some councils lack support from their legal team to take enforcement action due to concerns of the level of risk associated with winning the case. In times of severe resource constraint formal enforcement activities can be subject to a stringent cost/benefit calculation that results in a decision not to pursue the case.

An additional risk of adopting a strategy based mostly on deterrence is that when indiscriminately or inappropriately applied it can breed resentment and hostility.¹⁴⁵ One landlord representative from Northern Ireland criticised the heavy fines being issued for non-compliance with the HMO licensing scheme. This enforcement action was seen

¹⁴³ K. McKee, S. Leahy and T. Tokarczyk (2020) *Redrawing the border through the 'Right to Rent': Exclusion, discrimination and hostility in the English housing market*, Critical Social Policy, 1-20.

¹⁴⁴ Parker and Neilsen, *Explaining Compliance*

¹⁴⁵ Hodges, *Delivering dispute resolution*

as unfair because it was applied regardless of whether the breach was due to inadvertence. Rather than initially providing advice, support or information and then escalating the response where necessary, the strategy appears to be based mostly on punishment:

What's happening is somebody's getting smacked on because they haven't renewed their licence for a couple of months. The other thing that happened was that the previous authority used to write out to everyone six months before saying, "Your registration is due to expire on the 31st October, please fill in the application if the house is still an HMO." They stopped doing that, they didn't write out. A lot of people weren't aware ... Tell people and then educate them and if they don't do it, fine them. But don't come and fine them first and don't even educate them later. (Landlord group, NI)

Enforcement officers working within hard-line authorities (see chapter 4) also reported that some local authorities in England are moving towards punishment as the strategy of first choice:

It's become very much an enforcement thing rather than looking at things holistically and it's become very much punishing the landlord to improve the property. That is the approach that local authorities are adopting and obviously there are issues there. (Enforcement Officer, England)

There are important implications for compliance when punishment rather than dialogue and collaboration is in the foreground of regulating the sector. As noted in chapter 2, the degree of acceptance of the regulation and respect for the regulator are key factors that shape the likelihood that the regulated community will obey the law. To prioritise punishment whilst providing insufficient assistance or advice can undermine the goodwill of those that would – perhaps with some encouragement – be willing to comply. The literature suggests that this approach also risks fostering a subculture of resistance among the regulated community and makes it less likely that compliance will be achieved through cooperation.¹⁴⁶ Adopting a predominantly deterrence-focused approach also means that certain types of non-compliance will go unaddressed (see below).

Certain key themes regarding the successes and limitations of informal action are also evident within the data. First, the effectiveness of these mechanisms depends on the motivations and behaviours of those being regulated. Inadvertency among small landlords has long been recognised as the key regulatory challenge. Despite the growth and change in the sector it was still flagged by many local authorities as the paramount challenge they were facing. Several local authorities felt that the largest proportion of non-compliance was among landlords that were 'well-intentioned but ill-informed'; individuals generally willing to comply but lacking adequate knowledge, skills or resources. This was reported to be exacerbated by the growing number of regulations landlords had to comply with:

One of the things that we're finding more and more at the moment I think with looking at all the recent changes is quality and understanding of what landlords are required to do, more through ignorance than wilful bad landlords, I suppose. More and more of our accidental landlords not knowing what they should be doing, and because they don't consider it to be a business, they don't always consider themselves to be landlords in many cases, they don't really know where to go to access the right information. (PRS Co-ordinator, Scotland)

A second key theme is that landlords were typically perceived to respond well to informal activity. It was rarely necessary to escalate the enforcement response to formal action (see chapter 4). Although informal activities were rarely analysed, we were provided with evidence from Rent Smart Wales and some case study authorities that it could be highly effective among certain landlords:

Recently, we've been managing this as a project to secure compliance, and we can tell you at every stage what the impact of a letter was or what the impact of an email was, and it's massive. (Rent Smart Wales)

¹⁴⁶ Ayres and Braithwaite, *Responsive regulation*

I think sometimes you can get fixated on [formal] enforcement and about when you need to use that, but there are also a number of landlords in the area that a simple email will suffice or a phone call will suffice. (Improvement Officer, England).

The evaluation of Shelter Scotland's private landlord support officer project also found advice provision to be particularly effective among accidental landlords who had small portfolios and other commitments.¹⁴⁷ A key rationale behind dedicated landlord advisory services is that by focusing only on deterrence or formal enforcement a certain category of landlord behaviour is not being included in or targeted by the enforcement activity:

The advisory service can take on some of that proactive handholding approach to landlords. Which frees you up to do the ordinary administration on one hand and the heavy enforcement on the other. (Tenant Group, Scotland)

It is important to note that unintentional violation of the rules can still cause significant harm in the lives of tenants. However, this and other research suggests that focusing on deterrence is not only inappropriate but, as noted above, quite possibly a counterproductive approach with those who are willing to comply.¹⁴⁸ Where non-compliance is due to a lack of understanding or awareness, information and support, rather than the big stick, are required.

Participants were however aware of the limitations of informal activity that is targeted at a single landlord or letting agency.¹⁴⁹ Some local authorities were criticised for their over-reliance on informal approaches and for failing to escalate the response within a certain time frame:

Nobody is going to dispute that informal processes do work. But it's a case of saying to people, "Have you got your annual safety certificate, it's a legal requirement, can you send the copies to me?" That is fine. To send a letter then saying, "Oh, can you send me it?" then another letter, then another letter, that is giving the person the option to not bother with the law at all. (Landlord Group, England)

For some local authorities there also appeared to be a lack of consistency regarding when the response would be escalated. A risk of informal approaches is that once landlords establish that the approach is "all talk and no action" they subsequently disregard the local authority. In light-touch areas without a real threat of formal action the landlords' response to regulation was seen to be characterised by dismissiveness or game playing. Evidence provided by light-touch authorities shows that relying heavily on an informal approach without possible escalation is likely to be exploited by a small minority of landlords:

For a system of regulation to be effective, those that are been regulated need to know that action's coming ... I would say that they have twigged that this is not the case and ... so they just carry on regardless knowing that possibly nothing's gonna happen. Yes I think they do. They do know. (Housing officer, Scotland)

Informal activities were also reported to take more time than formal enforcement and, in some cases, could undermine the ability to ensure that all necessary repairs are completed. This appeared to be particularly the case where an informal approach was applied without clear time limits:

It's hugely labour intensive. Loads of time on an individual case trying to cajole a landlord along, and ultimately, maybe, backing off if he does 80% of the work and just leaves the rest, because it's too little now to serve a notice on. (EHO, England)

¹⁴⁷ Renting Scotland, [Private Landlord Support Officer Project](#)

¹⁴⁸ Hodges, *Delivering dispute resolution*

¹⁴⁹ In contrast to compliance-focused activity that is pitched at the entire sector, for example, in the form of training or advice (see chapters two and four).

Finally, the current financial environment negatively affects the provision of compliance-focused activities for some local authorities. Following a reduction in available resources a local authority in Northern Ireland had to stop several informal activities such as Facebook campaigns, advice provision to landlords, literature drops and call-ins with estate agents. A key stakeholder in Scotland also reported that some councils used to have 'really good interactions with the private rented sector' where they would offer free training courses, a free magazine and in-depth articles. During times of severe resource constraints these activities are not always seen as a priority and therefore scaled back.¹⁵⁰

The lack of outcomes or impacts data

Whilst no mechanism for regulating the sector can function effectively without an effective enforcement regime, this is one of the most difficult regulatory areas to analyse.¹⁵¹ We also face the more fundamental prior question of how effectiveness can and should be defined in this context.

A sense emerged in this study that many PRS teams struggle to evidence how their activities contribute to improved standards. The impact of different enforcement strategies and approaches is rarely monitored or assessed, so exploring the causal impact of informal or deterrence-focused activities is challenging at best. This is a common challenge associated with local authority regulation across sectors; a recent review found that they are generally poor at demonstrating the impact of these services.¹⁵² In this process they face various challenges including lack of data, lack of evaluation and analysis capacity, and difficulties in attributing impacts to specific activities.

As noted in chapter 4, one key stakeholder reported that some local authorities perceive success primarily in terms of outputs (such as the number of prosecutions) rather than outcomes:

Outcomes don't get you any publicity or headlines because they're not inputs or outputs, and inputs and outputs are much easier to measure and therefore get you headlines in newspapers. (Landlord group, England)

The wider sector similarly tends to confuse the output of local authority activity with its outcome or impact. For example, a lack of formal enforcement activities has been interpreted by landlord groups as demonstrating the ineffectiveness of selective licensing schemes in England.¹⁵³ However, the number of prosecutions, civil penalties, notices or inspections are not appropriate measures of success since the goal of regulation is not to secure prosecutions, but to improve standards by achieving compliance.¹⁵⁴

Although informal activity is often recorded in the form of case notes, this data was only analysed by a few participating enforcement agencies. This could represent a significant knowledge gap because, besides demonstrating its effectiveness in achieving compliance, there are several reasons why local authorities might wish to analyse this data. It could for example be used to determine the most effective point for escalating responses or for assessing the most efficient mode of communication. Among hard-line local authorities there was a tension between staff activity on the ground, organisational expectations, and recognition of activities that could - at least in principle - be measured or analysed:

We have it [record of informal activity] because we have a database that when we complete a case we say it is closed, the case is closed now, having done formal action, having improved the property, removed category one or category two ... it's just not monitored. It's interesting because I think if you look at that list and you'll find there's a lot of informal action. (Enforcement Officer, England)

¹⁵⁰ Some of these were relaunched when the Private Housing (Tenancies) (Scotland) Act 2016 came into effect.

¹⁵¹ J. Tiessen, C. Celia, L. Villaba-van-Dijk, A. Reding, C. Van Stolk and T. Ling (2016) *Impacts and Outcomes of Local Authority Regulatory Services*

¹⁵² J. Tiessen, C. Celia, L. Villaba-van-Dijk, A. Reding, C. Van Stolk and T. Ling (2016) *Impacts and Outcomes of Local Authority Regulatory Services*

¹⁵³ Simcock, and Mykkanen, *The Postcode Lottery*

¹⁵⁴ S. Lawrence and P. Wilson (2019) *An Independent Review of the Use and Effectiveness of Selective Licensing*, (For MCHLG)

Some local authorities were able to evidence the number of serious hazards and defects that were identified and addressed. One local authority in Scotland could demonstrate reductions in the number of properties that failed the Repairing Standard. Success was, however, largely discussed in terms of outputs. In addition, it seemed that only some local authorities regularly communicate their successes and activities to the wider sector:

I think it [national registration scheme] is enforced better than landlords think it is, because local authorities aren't very good at publishing their success stories when it comes to landlord registration, so I think landlords genuinely think there is no enforcement happening, but actually there's a fair bit. (Landlord group, Scotland)

Insufficient communication has potentially important consequences. Keeping landlords up to date on the outcomes of regulatory interventions such as selective licensing schemes is an important aspect of building effective landlord engagement.¹⁵⁵ Positive working relationships with landlord groups are key in achieving compliance and improving professionalisation of the sector.¹⁵⁶

New regulatory approaches

The first part of this chapter identifies several limitations associated with relying entirely on either deterrence or informal activity as the primary means of regulating the PRS. These findings echo a wider body of empirical and theoretical academic research demonstrating problems associated with a deterrence-focused or hard-line approach, including its inability to respond to the varied motivations and behaviours of different types of landlords (see Chapter 2). Even where deterrence is adopted at a strategic level, enforcement officers will often adopt a more informal approach based on communication and persuasion. This well-established finding from the academic literature was reaffirmed by our research for the case of PRS regulation. However, an over-reliance on persuasion or informal activity will leave vulnerable tenants unprotected and is likely to be exploited by a minority of landlords. These observations raise questions regarding local authorities' adoption of alternative regulatory approaches towards the PRS. In Chapter 4 we outlined compliance-focused and creative approaches, but this does not exhaust the possibilities. We now consider further dimensions of these more comprehensive regulatory approaches.

Self-monitoring and co-regulation

Landlord groups have argued that selective licensing in England should be abandoned in favour of voluntary self-monitoring or co-regulation.¹⁵⁷ A recent report by Shelter also states that co-regulation could be an effective approach for gaining landlord support and regulating the sector.¹⁵⁸

Feedback from our interviewees suggests episodic compliance to be common in the UK PRS. Episodic compliance is where a regulatee will obey the rules in the runup to an inspection or following the identification of a breach but does not display continuous adherence to the rules in the absence of oversight.¹⁵⁹ Numerous respondents felt that many landlords only comply with regulations following an inspection, formal notice, informal telephone call or other local authority intervention. The findings suggest that rather than a 'compliance culture' in the PRS, where the value of delivering to the relevant standards is internalised by landlords, obedience to the rules depends on local authorities being active in monitoring adherence:

I think there's a kind of almost unwritten culture around it's almost like this and there's always this problem with enforcement and regulation. I think a lot of our landlords want to be told what to do. (EHO, England)

¹⁵⁵ Lawrence and Wilson, *An independent review*

¹⁵⁶ Lawrence and Wilson, *An independent review*

¹⁵⁷ Simcock, and Mykkanen, *The Postcode Lottery*

¹⁵⁸ Newton, D. and Brown, P. (2019) *A good landlord scheme for Greater Manchester. What does the evidence say?* (Accessed: 10/6/20).

¹⁵⁹ This is discussed further in our forthcoming companion report: Marsh, A, Harris, J. and Cowan, D. (2020) *Private rented sector compliance: a systems approach*, CaCHE Working Paper, Glasgow: UK Collaborative Centre for Housing Research.

One English local authority that had recently reintroduced a selective licensing scheme thought that practices would deteriorate without external scrutiny:

You can just tell from the way in which the dealings you've had with them throughout that there was a very high likelihood they would just revert back to former management practices without the ongoing intervention from the council. (EHO, England)

Indeed, one case study reported that they dealt with landlords whose properties within the selective licensing area were managed and maintained in a manner that satisfied the requirements of their licence, while, simultaneously, properties owned by the same landlord outside the selective licensing area were being identified as requiring enforcement action.

The limitations of self-regulation in this context could be partly associated with those accidental or small-scale landlords who may fail to recognise themselves as part of an industry that requires regulation:

There are still a lot of landlords have that belief, "It's my property. If I want to lend it to three people in a room or keep a box room and they're happy with it and that's my right." ... its slowly changing but I think it has got a long way to go. (Licensing Team Leader, England)

Some may also fail to recognise their behaviour as criminal:

We have got a lot of landlords as well who don't see their mismanagement or their bad practices as being criminal, at all. "I'm not breaking the law here". (EHO, England)

These observations raise a question: to what extent is the PRS currently capable of self-policing? Two participating local authorities in England had tried to operate co-regulatory schemes run in collaboration with a landlord organisation. The idea behind these schemes is that the partner organisation would take on some responsibility for ensuring compliance. In essence, members of the landlord organisation were given discounts on the licence fee. In one organisation, this membership was linked also to an accreditation scheme; and, in another, landlord members were required to undergo a bespoke training course. Both authorities were rethinking their approach, in part because of a perceived lack of success.

The benefits of partnership working with a landlord organisation are that, in principle, local authorities should be able to take a more informal approach with members because they are more likely to be compliant with regulatory standards, especially if the training provided succeeds in upskilling the landlord or agent. However, in one of these schemes, no training, assessment, or development was provided to landlords before accreditation to help them meet standards. There also appeared to be disagreement and a lack of clarity regarding the administration of the scheme and the exact role the landlord organisation would play. The local authorities recognised that the landlord organisations were more light touch than they would have wished. The scheme essentially became a self-certification exercise:

I can't dispute the fact that (city council)'s criticism of the co-regulation scheme is such that the standards of landlord within the co-regulation or co-regulated members was probably not as good as it should've been. But there was nothing to prevent bad landlords from becoming members of that scheme unless there was evidence or knowledge about that landlord's behaviour previously. (Landlord group, England)

Ideally, from the perspective of self-regulation, the landlord organisation itself might have the ability to discipline its members for infractions of a code of practice or other infringement. This can then allow the local authority to concentrate resources on dealing with the most problematic cases. However, at present, it does not appear that

landlord organisations have this capacity. In the interviews the landlord organisations in this case study area tended to express concerns about the overarching regulatory approach of which the co-regulatory scheme was a part and, more broadly, about over-regulation of the PRS. It is difficult to see how a co-regulatory scheme can be effective when the partner fundamentally disagrees with the tool by which the sector is being regulated.

In several case studies accreditation schemes formed part of the package of compliance-focused activities offered to landlords. For example, one Scottish council referred landlords to the accreditation scheme under the “action plan” they draw up with non-compliant landlords. There was however a feeling among key stakeholders and local authority respondents that accreditation schemes generally only capture landlords who were already willing and able to comply. Whilst accreditation schemes were seen as part of the suite of tools used to regulate the sector, their role in increasing compliance appeared to be relatively limited.

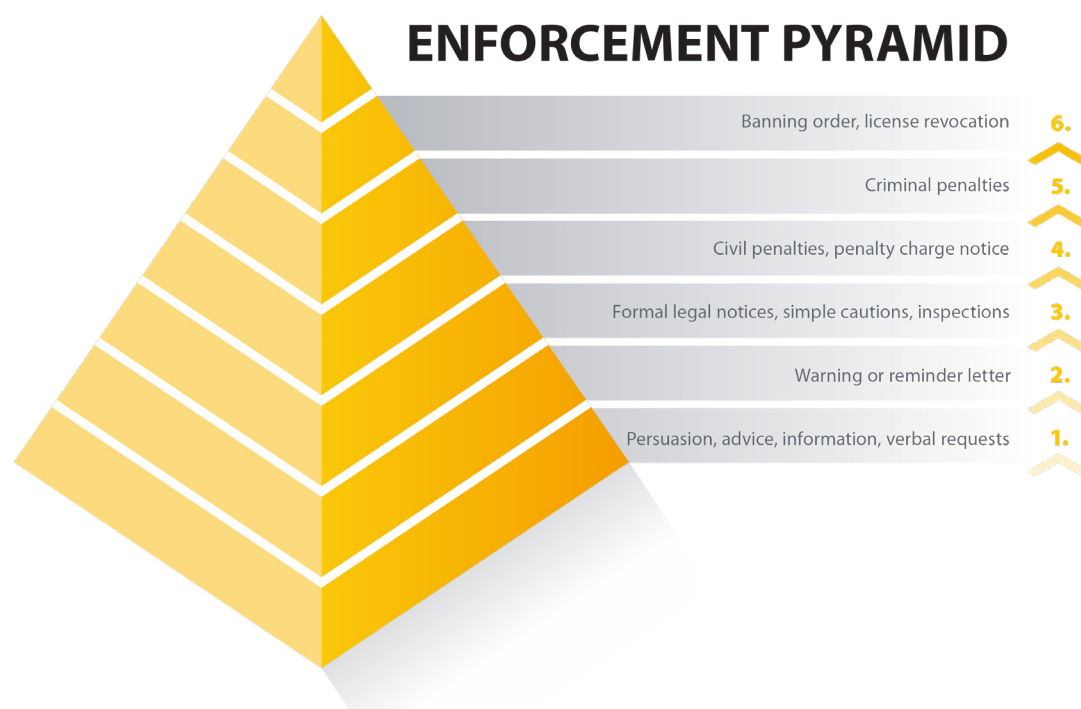
Responsive regulation

Enforcement officers in our study reported that their actions would be varied in line with the behaviour and attitude of those being regulated. The key variable was whether regulatory breaches were perceived to be the result of ignorance – in which case education would usually be the first resort – or whether landlord behaviour was regarded as criminal:

We might take a little bit more time with landlords where we feel as though, despite their best efforts, they haven't managed to get the property up to standard, or they have never come across us before. Whilst they should be aware of their legal obligations, fair enough we'll give them a chance. (EHO, England)

However, there was little consensus as to what kind of behaviour was “criminal”, or, indeed, what proportion of landlords fitted that description. These varied assumptions informed the different practices of enforcement of regulatory standards discussed in chapter 4.

Rent Smart Wales and some compliance-focused authorities appear to be consciously adopting responsive regulation as a means of combining both informal and deterrence approaches to regulation. This is also known as a pyramidal approach or graded response (see chapter 2). Here persuasion, advice, support and assistance are applied as strategies of first choice: this is where the bulk of regulatory action occurs. When a landlord engages with a local authority, they will first be supported informally. Then if the landlord exploits this position or does not respond to informal measures by complying, the authority will begin a graded response and move towards progressively tougher enforcement measures (Figure 5.1).

Figure 5.1: Example Enforcement Pyramid

The importance of a responsive or escalated approach for those that fail to cooperate has been highlighted by the MHCLG.¹⁶⁰ However, only occasionally had case studies explicitly adopted responsive regulation as part of their overarching strategic approach. This has important implications for consistency in the response, particularly in relation to escalation and de-escalation.

Some authorities used civil penalties, fixed penalties, or rent penalty notices (as appropriate) as a part of a responsive approach underpinned by a robust enforcement policy. Rent Smart Wales and some authorities in Scotland and England would apply penalties when softer, informal enforcement activities had been unsuccessful. Their response would then progress to the next higher tier on the regulatory pyramid; landlords would be made aware that additional escalation would be necessary if compliance was not forthcoming:

I think that from an important point of view, the more tools that you have, the more useful that really is, to be perfectly honest with you, because it's not going to be one size fits all. Some people will choose to ignore it until they get a fixed penalty and suddenly realise that they are getting fined. (Rent Smart Wales)

It's interesting at the moment explaining to a landlord that because of their relatively good track record, and because there hasn't been serious harm outcome for the tenant, we are letting them off with a financial penalty. That's a conversation to have. (EHO, England)

¹⁶⁰ MHCLG, *Tackling rogue landlords*.

For Scottish local authorities that used formal powers¹⁶¹ rent penalty notices were always the first step. Further escalation to criminal prosecutions was reported to be relatively rare, which indicates the effectiveness of the notices in achieving compliance:

But for landlord registration there has probably been about ten cases or something over ten years that we've referred because we've got either no proper evidence to refer them to the courts or the civil remedies have worked so that puts that in some sort of perspective for you (Enforcement Manager, Scotland).

One local authority in England provided evidence that financial penalties were an effective deterrent:

The civil penalties are having a desired effect to get people at least into the [selective licensing] scheme ... at the moment we have got one large licensing area that is divided into three. In phase one of the scheme there were about 20-odd civil penalties. Phase two there has been two. (Enforcement Manager, England)

The application of the law regarding civil penalties in England is not arbitrary but driven by robust policy, with penalty bands applied according to harm, severity of offence and landlord culpability. Among case study authorities, civil penalties were unlikely to be used where a light-touch enforcement strategy was adopted. Because civil penalties are part of an escalated response, where regulatory activity only takes place around the base of the pyramid, or if a high level of compliance is anticipated, it is unlikely that civil penalties will be employed:

Because again the civil penalty is only a result from not complying with improvement notices because we've not served improvement notices therefore, and generally even when we do they comply with them. (Head of Housing Services, England)

Escalation and de-escalation

The escalated strategy adopted by Rent Smart Wales provides an example of the use of an explicit enforcement pyramid. Here a range of sanctions are available ranging from informal activities at the base, extending to formal approaches including prosecution and rent penalties. Responsive regulation depends on having a range of sanctions to respond the diverse motivations and behaviours of those being regulated:

The fixed penalty notices work and of course then we can take to prosecution, either if they don't discharge their liability for the initial offence by not paying their fixed penalty notice - we then take them to court for that actual offence ... or for if they do pay but continue to not comply ... we can carry on then to take that case to court to try and ensure compliance through that route. Like I said, we still take prosecutions and sometimes people still choose to not comply. Then that is when we move onto rent stopping and, potentially, rent repayment orders. (Rent Smart Wales)

One criticism of the pyramidal approach is that sometimes a step-by-step escalation may not be appropriate,¹⁶² for example, where the tenant is at significant risk. The approach adopted by Rent Smart Wales illustrates that in these instances, it is possible to immediately move to the higher levels of the pyramid:

Of course, if we found that there was a case that was significant or of a serious nature, then we could skip a step because it's not that we have to go through those steps. We may take a case straight to court. Certainly if we were having, for instance, noncompliance after someone has already been prosecuted once, we can of course take them to court again if we establish an offence again. It would be inappropriate or it probably wouldn't be worthwhile to go back to doing a fixed penalty notice. (Rent Smart Wales)

¹⁶¹ Chapter four explores how authorities adopting a light-touch approach are unlikely to use formal powers.

¹⁶² Ayres and Braithwaite, *Responsive regulation*

Among local authorities in Scotland and England civil penalties are also seen as less effective for the most serious criminal offences and officers would sometimes bypass the civil penalty stage and immediately escalate the response to a higher tier on the regulatory pyramid (i.e. criminal prosecution). Officers in one case study felt that recent practice locally had come to lean too heavily on civil penalties rather than criminal prosecution and that this didn't send the right signals in relation to the most serious cases: there was an ongoing discussion about rebalancing the approach.

Criminal penalties therefore remain an important tool at the local authority's disposal. Prosecutions were generally reserved for particularly serious or high-risk offences such as fire safety and persistent patterns of behaviour such as failure to comply despite repeated local authority intervention:

[Rent Penalty Notices] can be effective I think because as I say, if you've got someone who is quite law abiding in the first place that's just maybe fallen down a bit it's easier for them to comply. They're not perhaps effective with the more crooked end of the market but when I say that I'm not actually saying that the entire system is a failure because it happens in every sector ... the criminal courts are very busy for a lot of reasons. (Solicitor, Scotland)

In addition to authorities adopting light-touch approaches, which fundamentally lacked clarity regarding the circumstances in which the regulatory response would be escalated, variation in practice regarding escalation was a common theme among participating authorities. Often this was down to the discretion of the individual officer. Rent Smart Wales however provides an example of step-by-step escalation being informed by clear organisational policies and procedures:

We have internal procedures, that stipulates ... the timescale people get. So normally, in the first instance, they would get a 14 day deadline and then after that, they might get a second seven day deadline and then after that, that's when you would look to do a fixed penalty notice ... actually what we're doing now is we're escalating ... because it's unrealistic and unreasonable for us to have to write five letters before you comply. That's not cost effective, not time effective and not reasonable. (Rent Smart Wales)

A further criticism of pyramidal approaches is that sometimes it may be appropriate to move the response down the pyramid where, for example, the regulatee has demonstrated an increased willingness to comply, but de-escalation is not necessarily straightforward.¹⁶³ There was also significant variation in practices regarding processes of de-escalation. For example, in England it is down to the local authority's discretion whether to pursue the penalty if the landlord has responded to the notice of intent. Some authorities in England take the view that they would never de-escalate the response once a notice of intent for a civil penalty had been issued or a prosecution commenced, either because they hadn't been given a good reason or because they believed it was morally wrong:

So first thing to say is same as you decide to drive a car, the police stop you, you didn't have a licence. That's an offence already, so we prosecute for [failure to license]. You can go and get a licence tomorrow, that's not going to change anything ... I think the landlords believe when they get stopped, when something happens, they can go and do what needs to be done and they think they will be okay – a lot of councils still do that. (Licensing Team Leader, England)

Other local authorities informed us that they would usually de-escalate the approach whenever the landlord demonstrated willingness to comply.

An additional criticism of responsive regulation is that for certain types of problems the optimum regulatory response will not be at the base at the pyramid but will demand a higher level of intervention.¹⁶⁴ In these instances a targeted regulatory approach may be more appropriate. Some compliance-focused local authorities were adopting an

¹⁶³ Baldwin, Cave and Lodge, *Understanding Regulation*.

¹⁶⁴ Baldwin, Cave and Lodge, *Understanding Regulation*.

informal approach for the wider sector but a stricter approach for certain problematic areas. However, even in these areas the principle of responsive regulation can still apply:

Where we've got activity and we're doing work in an area, it's a formal approach, but we'll still engage with landlords and say, 'This is what your property needs to bring it up to standard. If not, I'm afraid we'll see what we can do to close you down'. So we'll take action and we'll tell them we will take action against them, but generally, for the sector, it would be the more informal approach. (PRS Lead, Scotland)

Further key aspects of responsive regulation include identifying the regulatory logics behind the different tools employed and considering how they can interact effectively in practice.¹⁶⁵ Deterrence-focused or formal instruments are underpinned by very different understandings to those that animate informal tools. Two local authorities in Scotland that had just introduced an advisory service sought to respond to this challenge by differentiating their enforcement and supportive functions, where those responsible for providing advice did not have enforcement responsibilities:

So we try and keep the two things quite distinctive. In an area where we've had to be quite clear over the years because we look at the engagement and the access, it's quite difficult to be all things to all people. If you're trying to engage with landlords on the one hand, but enforce with the other, it becomes quite difficult. Landlords don't really want to see you if you're there in an enforcement capacity, so it's a difficult one in terms of building relationships. We try and keep the two functions quite separate. (PRS Co-ordinator, Scotland)

The findings indicate that responsive regulation has some traction among UK authorities. However, these approaches often lack strategic oversight and there appeared to be an absence of formalised structures and processes. Other than Rent Smart Wales, we identified only one example of a graded response to enforcement being outlined in a written local authority enforcement strategy.

The role of third parties

A narrow understanding of regulation concentrates on the enforcement of laws by public bodies as the lever to influence behaviour and increase compliance. Regulatory models such as *smart, decentred or networked* regulation recognise other possible sources of regulation besides the State and argue that other social actors can participate in the process of regulation using regulatory mechanisms other than law. This project sought to explore the extent to which local authorities draw on third parties in regulating the PRS.

In chapter 4 we noted that in some case study areas, particularly those adopting *creative approaches*, inter-agency activities were instrumental in identifying and responding to poor standards in the PRS. However, besides these activities there was limited evidence that other organisations or third parties were being enlisted in the process of regulation.

One local authority had tried to build a network of over 500 voluntary sector organisations as community partners who could help identify and report poor standards, deliver education and awareness-raising activities, and signpost landlords and tenants to appropriate services. The ethos underscoring this initiative was that everyone could play a role in helping to improve standards. This is an intriguing approach, but the local authority had struggled to engage organisations and at the time of data collection the initiative had not yet been successful. These efforts do however

¹⁶⁵ Black and Baldwin, (2010) Really responsive risk regulation

give an example of an attempt to redraw the regulatory map more radically to include a wider range of actors, including the local community:

The idea behind that is rather than us just doing all our comms and whatever, is to engage with as many community groups as possible where they would act as advocates for us to spread the word ... I don't mean housing specialists, community groups like advice for renters, or Citizens Advice Bureau that already know about it, but scouting groups, Girl Guides, groups that are engaging with just general people that they could then go away and if they have a meeting every now and again say we're part of this group where if you've got problems with your landlord or if you're privately renting then come and see us because we know where to refer you to.
(Service Lead, England)

Social lettings agencies and PRS access projects are examples of third parties that could play a role in improving standards and management practices within the sector. Social letting agencies are social purpose commercial agencies that operate to support both landlords and tenants on lower incomes or who might be vulnerable to ensure the tenancy can be sustained over the long-term. They can act as a conduit for disseminating good practice in housing management into the private rented sector, both directly and indirectly.

However, most case studies were not exploring opportunities for strategic co-ordination with third parties. This might mean, for example, establishing structures for regular information flows in both directions between the local authority and advice agencies, tenant groups, or local colleges and universities about issues arising in the sector. Or seeking to embed landlord organisations in structures for disseminating information to landlords. Engagement primarily occurred at the level of consultation, and even then, it was not always clear how the concerns of landlord or tenant groups were taken on board in a meaningful way. Whilst there are isolated pockets of good practice, social models of letting agencies are generally not given much consideration in local housing strategies.¹⁶⁶ In most areas, state-centred regulation was used as the single instrument to address standards within the sector. The potential of using a range of different approaches implemented by a range of different parties has yet to be realised in the PRS context.

Summary

Our findings indicate some key practical issues associated with relying on fines, prosecution or other formal remedies as the primary way to affect landlord behaviour in the private rented sector. These issues include inadequate resources, the way in which breaches are identified, the level of and way in which legal penalties are applied, and the risk that unintentional non-compliance goes unaddressed. In the regulatory literature it is generally acknowledged that when used in isolation, deterrence-focused approaches are unlikely to be effective.¹⁶⁷ At the other end of the spectrum, an over-reliance on informal activity will be exploited by some landlords whilst leaving vulnerable tenants unprotected.

Lessons from the case studies indicate regulation in the sector is more likely to be effective when local authorities aim to find a balance between the two approaches. This is evident in those case studies applying *compliance-focused* strategies (see chapter 4) and responsive regulation. Whilst some authorities appear to be consciously applying the principles of responsive regulation, only occasionally is it adopted at a strategic level. Clear organisational policies and procedures can lead to more procedural fairness and consistency in the application of the law.

¹⁶⁶ Shelter Scotland (2016) *Social Models of Letting Agencies*

¹⁶⁷ Hodges, C. (2019) *Delivering dispute resolution: a holistic review of models in England and Wales*. Oxford: Hart.

6. Discussion and recommendations

This Chapter draws together findings on the enforcement of standards in the private rented sector and key policy recommendations derived from this study. The chapter is structured around five key themes: i) the importance of a strategic approach; ii) improving the availability of data; iii) maximising the effectiveness of compliance-focused activity; iv) the use of responsive regulatory strategies; and, v) exploring a tenant-focused approach. The chapter concludes with a series of recommendations for policy and practice.

The importance of a strategic approach: England, Scotland, Wales¹⁶⁸

In their most recent review of the PRS in England, Rugg and Rhodes highlight the need for a fundamental change in the regulation of the sector at a national level.¹⁶⁹ They call for an overall strategy for the sector developed through an extended period of consultation with diverse stakeholders, focusing on dismantling government departmental silos and moving away from the current trend of tweaking different aspects of the system in isolation. Stakeholders in Scotland also reported the Scottish Government strategy is out of date and suggested that the overarching strategic aims for the PRS should be revisited. We support these recommendations and believe that consolidation and simplification of the law is a precondition to more effective enforcement practices. In this section we consider the strategic changes that local authorities can adopt to improve the regulation of the sector at a local level.

For some time, local authorities in England and Wales have been responsible for developing general housing strategies on a range of issues across their local housing stock. These general strategies should encompass the PRS, alongside home ownership and social renting: they can be supplemented by more detailed tenure-specific strategies, where necessary. In Scotland, the development of local housing strategies also allows councils to think strategically about the role and operation of the PRS. However, this does not imply that local authorities are generally active in their regulation of the sector. In the initial online research informing the sampling for this project, relatively few local authorities appeared to have strategies that covered the PRS - or, at least, if relevant strategies towards the PRS exist they were not publicly available or easily discoverable - or seemed to be actively engaged with the sector.

We made a deliberate effort to sample local authorities which available documentation indicated were making noteworthy efforts in this area. However, it turned out that even among the selected authorities some were in reality doing very little to address poor standards or management practices in the PRS. Stakeholder interviews also indicated that only few local authorities take an active role in regulating the sector. The findings suggest a culture change is needed - local authorities need to accept the PRS as a significant player in their local housing markets that demands strategic thought and organisation. A key policy lesson, therefore, is that local authorities should seek to demonstrate an explicit strategic approach to the sector in reformulating their housing strategies.

These strategies are however only as meaningful as their practical application. Our findings suggest that in certain areas well-intended regulatory activity has grown starkly out of alignment with its original objectives. As highlighted by recent reports in England, adequate resource investment, strong political support, clear leadership, and robust enforcement policies are key in developing successful strategic approaches in managing the sector.¹⁷⁰

Findings from our case studies add to this discussion by suggesting that a positive way forward involves not only considering the application of formal penalties, but also appreciating the value of broader regulatory techniques. As explored below, these regulatory techniques would cover issues of aims and purpose (does the adopted understanding of the problem capture all relevant dimensions?), holistic thinking (what is the role of other organisations within this process?), internal design (e.g., how are PRS teams are configured? Do they work collaboratively?), and how outcomes are defined and measured.

¹⁶⁸ In Northern Ireland, the housing functions with local authorities is limited. The development of housing strategy rests with the Department for Communities and statutory responsibility for homelessness with Northern Ireland Housing Executive

¹⁶⁹ Rugg, J. and Rhodes, (2018) *The Evolving Private Rented Sector: Its Contribution and Potential* (Accessed: 23/7/20)

¹⁷⁰ Lawrence, and Wilson, P, *An Independent Review; MHCLG, Tackling rogue landlords*.

Aims and purpose

A consideration of the goal or wider social impact that the PRS team is striving to achieve is key to regulating the sector in a more strategic and responsive way. This opens a space for creative thinking in how the problem is defined. Ashby's principle of requisite variety suggests that addressing a complex problem or system requires a range of responses of equivalent complexity.¹⁷¹ The MHCLG Rogue Landlord Guidance in England covers examples of local authority enforcement activities where housing conditions are not the only focus. Findings from our authorities adopting *creative approaches* add new knowledge by illustrating the key factors driving these approaches, including clear aims and objectives framed in terms of outcomes; the innovative use of data and evidence; an entrepreneurial approach to building political support and securing additional funding; and a system-based and tenant-focused approach.

Our findings suggest that an overarching goal, related organisational aims, and a clear understanding of the problems, as manifested in local housing markets, are critical in the development and orientation of local authority strategic approach. This will help local authorities decide on the interventions or activities needed. The creative authorities in this study understood the PRS in different ways: as having pockets of deprivation each with a distinct range of issues; as representing a health concern; and as a part of a system that requires thinking about inter-linked problems and how to identify them. Consequently, those authorities prioritised complex long-term responses which at their core involved establishing new relationships among various actors.

A holistic approach

One of the benefits of a housing strategy is that PRS issues can be approached in a holistic manner. The PRS now provides accommodation for a population that earlier might have been able to access social housing. One widely recorded phenomenon is that housing problems often occur alongside other issues. Research shows that problems relating to housing, benefits, debt and relationship breakdowns often go hand in hand, and that society's most vulnerable people will be more likely to have interlinked problems.¹⁷² Tenants approaching a local authority with housing disrepair issues may well also be experiencing other problems or issues.¹⁷³

The development of a holistic strategy takes account of vulnerable populations and tenant needs in the PRS. It provides an opportunity to think creatively and draw in organisations that can help with issues ranging from welfare benefits advice to veterinary assistance for pets. Engaging with other services could also provide a means for housing staff to receive the necessary training to identify and respond more effectively to problems tenants are facing. The *creative and compliance-focused* local authorities in this study show the benefits that can result from restructuring provision and developing new models of integrated services. Facilitating more effective collaboration between various housing teams and external partners could be key to achieving lasting change and more efficient use of resources.¹⁷⁴

Multi-agency working

The MHCLG rogue landlord guidance in England has highlighted the need for multi-agency work to ensure effective enforcement. Our research illustrates the importance of partnership-work; this is not only to identify non-compliant landlords or letting agents but also to identify and provide support for vulnerable claimants within a tenant-focused approach (see below). This could include, for example, signposting tenants to the appropriate services. The creative authorities demonstrate that building effective partnerships with a range of potential partners is key to developing a more coherent and holistic approach. We support the recent recommendation in England¹⁷⁵ that local authorities be

¹⁷¹ Gibb, K. (2019) – *System-thinking and housing* – Online blog.

¹⁷² Moorhead, R. and Robinson, M. (2006). *A trouble shared: legal problems clusters in solicitors' and advice agencies* (Accessed: 25/11/19).

¹⁷³ JUSTICE, Solving housing disputes; S. Nason, A. Sherlock, H. Taylor, H. Pritchard. (2020) *Public Administration and a Just Wales: Education* (Accessed: 20/7/20)

¹⁷⁴ These observations do not apply to Northern Ireland where there is no "housing team". Functions in relation to enforcement of PRS regulations/fitness standards are undertaken by and located within Environmental Health Departments.

¹⁷⁵ Lawrence, and Wilson, *An independent review*

given additional guidance on the issue of multi-agency working and suggest that similar guidance is developed by all devolved Governments. It is also important to acknowledge that building and maintaining effective multi-agency arrangements requires a sophisticated set of leadership and organisational skills.

This report demonstrates the challenges that two-tier local authorities in England may face in building needed relationships. However, issues relating to multi-level governmental structures are generally absent in discussions on enforcement in the UK PRS. As such we would recommend that in the development of policy and practice guidance, the MHCLG should consider the issues faced by two-tier local authorities.

Internal organisation

Giving strategic thought to the sector will also require local authorities to consider the role of enforcement officers and the way in which the PRS teams are configured. Licensing or registering landlord activities requires different skills from licensing a taxicab and driver. The nature of the PRS, the object of regulation itself, and the powers of the licensing authority in respect of non-compliance are more complex and require considerable expertise. It makes little sense to organise PRS licensing or landlord registration alongside other licensing activities. There was evidence in our study that this led to inefficiency, lack of communication and confusion regarding the delegation of roles and responsibilities.

The MHCLG select committee in England has called for better joint working between departments or a transfer of all duties to a single department.¹⁷⁶ Findings from this study indicate that Scottish local authorities would also benefit from the integration and co-location of landlord registration with other housing services. This could lead not only to more efficient use of resources, but also to opportunities for information exchange and a shared commitment to a key goal or vision for the sector.

An effective strategic approach entails providing adequate consideration to how different departments that address PRS related issues are aligned and work collaboratively. This may include housing enforcement, environmental health teams, trading standards, building control and planning, the police and other public services. Where relevant, local authorities should also develop approaches to working with neighbouring authorities. Outside of the larger cities, local authorities may wish to explore the potential to come together and establish regional teams skilled in working within the PRS and pursuing enforcement. Management arrangements for these multi-partner teams might offer the potential to enable PRS tenants and landlords to be engaged in the process of designing and implementing regulation.

Our research emphasises that these recommendations need to be sensitive to the specific issues faced by two-tier English local authorities and areas in the UK where co-location may be difficult (for example, across large rural areas). However, some of our English case studies approached the issues creatively, for instance by making appropriate delegations which allowed the legislative split between having an EPC and enforcing the MEES to reside with the same authority. In areas where co-location is not possible, integration or collaboration can take place by developing shared strategies or joint processes or projects, for example, in relation to research. Further advice and guidance are needed to support processes of service integration or co-ordination of operations where co-location or the creation of new organisational forms is not a realistic objective.

Demonstrating outcomes and impacts

Local authorities have extensive experience in measuring their activities in terms of outputs. However, there is some indication that processes of assessment and evaluation could be improved and that within the wider sector there may be a need for an increased awareness of the distinction between outputs and outcomes. Whilst auditing activities can be important in helping improve services, they do not fully capture the changes brought about by a specific activity or suite of activities.

¹⁷⁶ Housing, Communities and Local Government Committee (MHCLG) (2018) [Private rented sector: Fourth Report of Session 2017-19](#)

Situating outcomes at the centre of the strategy can help local authorities move away from the more traditional output-focused approach. Once the ultimate aim or goal has been agreed, local authorities will need to make an evidence-informed decision on the desired outcomes: the broader changes or benefits that they anticipate will result from their enforcement activity. Whilst these outcomes can form part of the key performance indicators that authorities are required to report on – for example, where selective licensing is in place in England - our study indicates they are rarely communicated to the wider sector. As explored in chapter 2, respect for the regulator and an acceptance of regulation are key in promoting compliance. We therefore recommend that local authorities regularly report on the outcomes achieved (e.g. via regular newsletters or on their website), considering this to be an essential part of building a positive relationship with the sector.

A lesson for the wider sector is that the number of prosecutions or other forms of formal activities are not appropriate measures of the effectiveness of a regulatory approach. However, a principal issue to be considered is that certain actions cannot be measured easily. A strategy of working with a landlord over an extended period to obtain compliance or partial compliance, but excluding formal action, does not generate a straightforward measurement. Yet, if the goal of enforcement is to ensure that tenants live in accommodation which meets certain standards, then such activity is successfully contributing to meeting that goal. We would recommend therefore that local authorities should seek to capture informal activity more systematically and report on cases that are resolved by informal and by formal action. They should also explore further ways to evaluate the impact of the compliance-focused activities.

Improving the availability of data

One particularly notable theme within our case studies was that they drew on different datasets to develop their general approach to the PRS. However, certainly in England (but also in other jurisdictions), there was a lack of knowledge about the sector at local level. Some case studies sought to improve the availability of data by appointing an external organisation to conduct a survey of the sector in the area or used other sources of administrative data, such as an interrogation of housing benefit and council tax data. One authority conducted a drone survey of the condition of roofs in an area with concerns about damp penetration.

Whilst the case studies provide interesting examples of practice in this area, these information sources have considerable limitations. Following the migration to Universal Credit (held by the DWP), housing benefit data (held by the authority) is proving difficult to obtain. Use of other proxies (such as HM Land Registry data) was said to yield very limited results. Reports by external organisations were said to be of variable quality. In addition, using council tax or housing benefit to identify landlords presupposes they are paying tax which won't always be the case.¹⁷⁷

Administrative data collected by the tenancy deposit schemes offers a potential source of information that could be drawn upon to inform local strategies towards both the PRS as a whole and enforcement more specifically. Non-compliance with the deposit protection requirements may be indicative of a parties' general approach to compliance. However, feedback from our participants suggests that local authorities do not see tenancy deposit scheme data as particularly accessible or useful in its current form. Identifying non-compliant landlords only works if the data from all three schemes can be easily accessed by local authorities. If all tenancy deposit schemes are willing to share relevant data with local authorities, then the question arises regarding how the data can be brought together into one database to make it useful for councils to interrogate. If this data were to be routinely used as a resource for local authorities, a means of providing the data that is not hugely resource intensive for local authorities or the tenancy deposit schemes would need to be developed.

¹⁷⁷ Whilst it was not mentioned in the interviews some commentators have highlighted the problem of tax evasion in the UK PRS. For example, <https://www.lettingagenttoday.co.uk/breaking-news/2017/8/academic-alleges-massive-tax-evasion-throughout-private-rental-sector> and <https://www.generationrent.org/landlord-tax-evasion-what-do-we-know>

Disaggregated data and granular geographical information are key if local authorities are to develop strategies that exert effective leverage on the various types of landlords and local housing market conditions. Across the UK there is a need for an effective and responsive database that evolves in real time and consequently allows local authorities to understand the sector and the way in which it is changing.

In England, one option for developing this information would be through a system of enforced self/co-regulation that introduces a legal requirement for all landlords and letting agents to join a professional association. A data-sharing agreement could then be drawn up between the professional association and local authorities.

Co-regulation or enforced self-regulation

Co-regulatory schemes can be somewhat beneficial on a local level, for example, by providing possibilities for mixed funding for training schemes to develop landlord knowledge on their obligations. Our research does however suggest that a move from the current situation based upon locally-developed practice to a national system of enforced co-regulation may not be practical unless there were substantial contextual changes.

For such a system to work, professional organisations would need to be able and willing to robustly discipline their members for infractions of the regulations. Professional landlord organisations currently have a limited membership and a defined purpose; those that participated in the interviews emphasised this did not include enforcing against their members. Consequently, a national co-regulatory scheme would require a significant reorientation of thinking or the emergence of new types of organisation.

A national co-regulatory scheme would also require a regulatory body - a so-called 'metaregulator' - to provide independent oversight. The existence of such a body is necessary to ensure that co-regulatory mechanisms were being operated robustly and were therefore viewed as legitimate and credible. This would represent a significant change to the current regulatory architecture.

National registration schemes

Unless the changes to the regulatory architecture and the nature of landlord organisations are introduced – so that membership of such a body effectively becomes a licence to operate – we are a long way from co-regulation as an effective solution for increasing overall compliance. We therefore believe that appropriately designed national systems of registration or licensing will be the only means to regulate the sector effectively, including providing local authorities with the data they need. National systems of registration and licensing are potentially powerful tools in the development and sharing of knowledge about the sector, as well as the upskilling of landlords and letting agents.

Several academics, industry groups and the MHCLG select committee have called for a national system of registration in England. Evidence from elsewhere in the UK suggests registration and licensing schemes can be effective, when appropriately designed. Our research adds to this discussion by highlighting further key factors that will need to be taken into consideration in introducing and improving national registration schemes:

Identifying non-compliance

In principle systems of registration and licensing should provide more complete datasets, which would at least need to cover the identity of landlords and properties. The sector is however characterised by fluidity and a lack of landlord knowledge about relevant requirements, resulting in the numbers actually registered/licenced falling short of the numbers that should be registered/licenced. Proactive enforcement, data sharing protocols and joint working are key in identifying non-compliant landlords. A principal example of the former is Rent Smart Wales, where the enforcement of the obligations is shared with local authorities as part of their ongoing role in enforcing standards. As explored below, effective enforcement practices also play an essential role in ensuring that these schemes are fit for purpose.

Scheme objectives

A further point relates to the objectives of national schemes. In Scotland and Northern Ireland case study participants described a deficit in purpose. Several participants in Scotland highlighted – with landlord registration having been hastily assembled halfway through a bill change in 2004 as part of the Antisocial Behaviour etc. (Scotland) Act - an ongoing debate about what the scheme is aiming to achieve and how effectiveness can be measured. On a local level, local authorities in Scotland are also reported to continue focusing on the administration of the scheme rather than making it more policy purposeful. In Northern Ireland these issues warrant consideration on a national level (see below). This then leads to a key policy recommendation that national systems of registration or licensing require greater clarity of purpose, both on a national level and in their enforcement by local authorities.

Information sharing agreements

If one of the purposes of registration and/or licensing is to expand available information about the sector – a legitimate interest of government – the next question is what to do with that information. If the information is used in a passive manner or cannot be accessed by local authorities, there may be little point in collecting it.

The Northern Ireland Assembly should consider whether the national registration scheme as currently configured is fit for purpose. The findings suggest that current data sharing restrictions significantly limit its usefulness as a means of targeting enforcement and communicating with the sector at local level. The scheme's potential to reduce inadvertent non-compliance by improving the landlords' understanding of their responsibilities is therefore greatly diminished. These restrictions mean that local authorities also lack incentives to enforce it, with our findings suggesting that at present little is done to identify those operating outside the scheme.

Maximising the effectiveness of compliance-focused activity

Our findings illustrate that an exclusive focus on formal enforcement overlooks some of the most important aspects of the work of local authorities. Several of our case studies and Rent Smart Wales prioritised compliance-focused models of regulation; whilst they were open to using formal tools where necessary, the primary activities were seeking to help landlords comply. The data illustrates, in some cases, an increased emphasis on providing advice and information through dedicated advisors, helplines, training sessions, and other support mechanisms.

Certain characteristics of the UK PRS indicate that these less interventionist measures will often be preferable. For example, compared to other regulatory contexts the PRS has a higher level of amateurism. Case studies and key stakeholders all reported that most landlords will only own one or two properties and are often accidental landlords. Whilst we noted in chapter 2 that a broad range of factors shape compliance, knowledge of the rules and capacity to comply appears to be particularly salient within this context. Much non-compliance in the UK PRS does not appear to stem from rational calculation but rather from a great many landlords being confused about the rules or failing to identify themselves as a business that requires regulatory oversight. Some also lack the necessary economic resources and technical knowhow – the capacity – to deliver compliance.

Inadvertent behaviour among small landlords has long been recognised as the key regulatory challenge. Despite growth and change in the sector, local authorities still flagged this as a crucial issue and a main focal point of their regulatory activities. Our study provides new insight into why and how local authorities across the UK choose an enforcement approach to respond to this challenge. Although informal activity is rarely analysed, we did obtain evidence suggesting that with many landlords these activities can be effective in ensuring compliance. The effectiveness of compliance-focused activities is also supported by research in many other regulatory contexts. The promotion of good practice and the provision of information should be the main strategic and operational priority for non-compliant landlords who unintentionally violate the rules.

Other reports indicate that local authorities will often apply informal approaches in their regulation of property standards. However, at present little is known about the role and impact of compliance-focused enforcement activities. In the context of increasing resource constraints that significantly impact on local authorities' ability to deploy formal enforcement mechanisms, it has also become increasingly important to explore the potential and limits of these activities. As explored below, our research adds new insights into certain principles and approaches that may facilitate the effective use of compliance-focused activities.

A balanced approach

Whilst compliance-focused and deterrence-focused activities exist at opposite ends of the spectrum, they are not binary options. Although authorities which prioritised either formal or informal activity engaged in actions along the spectrum, four distinctive orientations could be identified within the data.

Some case studies preferred strict measures and a "hard-line approach," while others favoured non-coercive activities and a "light-touch" approach. The findings indicate that a strategy totally based on persuasion, *ad hoc* advice and informal action is likely to be exploited by a minority of landlords. If the local authority is seen as unwilling to apply tough enforcement action where appropriate, this may also impact on trust and respect among the wider landlord community. On the other hand, to adopt a deterrence-focused approach as a first choice in all circumstances appears to be both unaffordable and unworkable. The landlords' reaction to the licensing of HMOs in Northern Ireland provides a stark example of the risk of a hard-line approach breeding hostility and resentment among those willing to comply but lacking the necessary knowledge or skills.

These findings suggest that in isolation neither compliance nor deterrence-focused strategies are likely to be effective in a PRS context and that local authorities should aim to combine both approaches. The smart regulation literature suggests that the use of multiple rather than single policy instruments usually produces more effective regulation. Our findings suggest that there is scope for this principle to be more broadly applied to the PRS. Local authorities adopting "compliance-focused" or "creative approaches" clearly demonstrate the benefits of a blended range of tools or approaches.

Adopted strategically

Most case studies engaged in some level of informal action - regardless of whether this approach had been adopted at a strategic level - since the role of an enforcement officer on the ground involves considerable discretion. Our findings suggest, however, that less interventionist measures are likely to be most effective when designed and delivered at a strategic level as part of a proactive approach. *Ad hoc* communication with individual landlords will only reach a small proportion of the landlord population and consequently can only have a limited impact. In Scotland it is imperative that local authorities properly use the national registration scheme to communicate with and upskill the sector. In Northern Ireland, these issues warrant consideration at a national level (see above).

The activities of *compliance-focused* and *creative* authorities tended to be multi-channel by using a mixture of online, telephone and face-to-face communications. These activities were not restricted to an occasional landlord forum or the promotion of accreditation schemes: some interviewees recognised that these activities might be of limited use in reaching the non-compliant landlords they meant to target. Rather, compliance-focused approaches appear to be most effective when a range of activities are provided systematically and regularly and targeting the sector at large. Scottish and Welsh local authorities also reported that the integration of a dedicated landlord advisory function into the PRS team increased rates of compliance. Quite apart from the regular changes in the policy and legal framework, regular inflows of new landlords into the landlord population implies that engaging with the sector to communicate responsibilities and clarify legal obligations needs to be a recurrent – if not continuous – and open-ended activity.

Our findings indicate that rural communities may have difficulty provided compliance-focused activities at scale. The rural PRS comprises many sub-markets that tend to be geographically dispersed over large areas. If a large part of non-compliance in these areas is due to inadvertence, as our case studies suggest, then these activities would be all the more important. One of the challenges highlighted by the ongoing COVID-19 crisis is to find ways to provide advice and support at a distance. This has challenged the advice sector to adjust the framing and application of their practices and to creatively use technology to meet the needs of those using their services. We would invite the research community and local authorities to be aware of the various options and learning gained regarding the use of digital technologies in providing advice, not simply during this time of social distancing but as a future mechanism for overcoming some of these challenges of physical distance.

Evidence-informed

Effective regulation involves decisions on the appropriate blend of enforcement strategies for the particular context that is being regulated. The emphasis given to either compliance or deterrence-focused activities will depend on the context. If research identifies a high level of intentional criminal activity, a local authority may choose to focus primarily on tough enforcement action. Equally, if non-compliance in an area is predominantly due to inadvertence or a lack of knowledge, then education-based strategies may be prioritised. Regardless of the tools that are prioritised, it is essential that these decisions are evidence-informed.

In areas with a high level of intentional criminality it may be necessary to focus on the highest risk. However, this approach may lead to a significant amount of non-compliance remaining unaddressed. Inadvertent non-compliance may still cause significant harm in the lives of tenants, and in these areas compliance-focused activity must still form part of the overarching regulatory approach.

Greater nuance in the language of non-compliance

Policy discussions on the PRS can suggest a binary distinction between the majority of responsible landlords and the minority which are deviant in some way; the “criminals” or “rogues”. Such a distinction is unhelpful in the context of enforcement and the reasons for non-compliance in the UK PRS. One of our participants emphasised that the positive connotations of the term “rogue” do no justice to the seriousness of the offences that are committed. More generally, the term is unhelpful and unlikely to resonate with the many landlords who may not wilfully neglect the law. Nor does it resonate with those local authorities that expend significant effort in responding to serious criminal behaviour. On the other hand, by focusing attention on a subsector of criminal landlords the distinction risks downplaying the incidence and potential impact of regulatory breaches elsewhere in the sector.¹⁷⁸ It is an unhelpful reference point for the design and promotion of effective enforcement practices.

The availability of resources

A blend of different enforcement strategies is costly. Local authorities already struggle with operating in the challenging context of meeting increased demand with increasingly constrained resources. Resources are a key factor affecting implementation of strategies; not just funds for services but also personnel with the necessary skills and experience to deliver successful enforcement actions. The evidence suggests that a lack of resources has become a significant deterrent to carrying out prosecution activity. Services require adequate funding to develop appropriate

¹⁷⁸ Such breaches can, as we have noted, be the result of ignorance or inadvertence. This was certainly a view we heard from interviewees across our case studies. However, that does not exhaust the possibilities. For example, in the specific context of harassment and unlawful eviction Marsh et al (2000) noted that ‘good’ landlords can sometimes knowingly engage in bad practices (eg unlawful eviction) while rationalising them as being justified by ‘good’ reasons (eg. to deal with troublesome tenant behaviour quicker than is possible through formal channels, out of consideration for other local residents). Hence neatly distinguishing ‘good’ from ‘bad’ landlords with respect to the legality of their management practice is more complex than simple binaries imply. See A. Marsh, R. Forrest, P. Kennett, P. Niner, and D. Cowan (2000) *Harassment and unlawful eviction of private rented sector tenants and park home residents*, London: Department of Environment, Transport and the Regions.

and effective responses to the changing nature and context of the PRS. In England, the Housing, Communities and Local Government Committee also recommends that ‘while councils need to be better at enforcing standards, the Government needs to provide more resources for councils to ensure they have the capacity to enforce the law’.¹⁷⁹

Although some additional funding has become available in England, this is usually made available through a bidding process operated on extremely tight timescales and is generally only available for short-term projects. Our research suggests that such staccato projects are not the most effective way to assist the development of the longer-term strategies that are needed.

Prevention

These observations indicate a further need to consider prevention and the role of local authorities in encouraging adherence to standards. Most case studies adopted a traditional and relatively reactive approach to regulation. Enforcement action takes place either in response to an activity that produces a dangerous situation or in response to the realisation of harm. The development of new compliance-focused approaches – such as the dedicated advisory function of some Scottish councils; the introduction of a landlord helpline in Northern Ireland funded by the Department for Communities;¹⁸⁰ or the adoption of “Call before you serve” Service in England¹⁸¹ – suggests a growing concern for the prevention of harm in the first place. These initiatives could potentially reduce the level of non-compliance from inadvertence and thereby prevent more costly enforcement action. It is important to note, however, that less interventionist measures must operate within the shadow of the law, where formal enforcement is understood by landlords to be a viable and credible option (see below).

Responsive regulatory approaches

The recommendation that compliance-focused measures are adopted at a strategic level, raises questions about how they can be provided alongside formal enforcement activities. The findings illustrate how the prioritisation of the use of different tools in the PRS is underpinned by different assumptions and enforcement philosophies. For example, when non-compliance is assumed to result mainly from deliberate rule avoidance and formal action is seen as an effective deterrent, then a *hard-line* approach may be adopted. If it is believed that persuasion is more effective in ensuring landlord compliance, then a *light-touch* approach may be prioritised. This report, by highlighting the diversity of models in operation, makes a new contribution to current understandings of enforcement in the UK PRS.

The findings indicate that some case studies adopt responsive regulation in order to effectively combine different approaches in practice. This is also known as a pyramidal approach or graded response. Here persuasion, advice, support and assistance are applied as strategies of first choice and it is in this area that the bulk of regulatory action is taken. The principle is that the regulatory agency escalates to more punitive responses where prior efforts have failed to secure compliance.

The importance of a responsive and proportionate approach has been highlighted elsewhere. For example, in England the Rogue Landlord Guidance reports that effective authorities adopt an escalated approach for both repeat offenders and for those who do not engage with initial interventions. Our research indicates, however, that consciously pyramidal approaches are only occasionally adopted at a strategic level and are rarely communicated to the sector (e.g., online or in regular newsletters). Whilst many officers told us that they would adapt their approach to the behaviour and attitude of the regulatee, we identified only one example among our case studies of a graded response to enforcement being outlined in a written enforcement strategy and made publicly available.

¹⁷⁹ Housing, Communities and Local Government Committee (2020) [Building more social housing: Third Report of Session 2019-21](#) (Accessed: 27/7/20).

¹⁸⁰ Department for Communities in NI has funded operation of a Landlord Helpline since 2016: this is provided, on their behalf, by Housing Rights, is free at point of delivery and deals with over 1500 calls per year. Its aim is to encourage statutory compliance and promote good practice amongst landlords and letting agents operating in the private rented sector

¹⁸¹ <https://www.dashservices.org.uk/Shared-Services/CallBeforeYouServe>

As discussed in chapter 2, trust and respect for the regulator are important factors in achieving compliance. Compliance is most likely when an agency displays an explicit enforcement pyramid that clearly illustrates a local authority's desire to work with landlords in the first instance and illustrates the ability and willingness to apply sanctions that are less drastic – and therefore more realistic – than prosecution.¹⁸² At the same time, it can give clarity regarding the circumstances in which the local authority will choose immediate escalation to more formal action. A clearly articulated enforcement pyramid can lead to less inconsistency and greater procedural fairness in the approaches adopted by officers. Rather than escalation, or de-escalation, being applied at the discretion of the individual enforcement officers, this should be part of the enforcement strategy.

Pyramidal approaches depend on the availability of a range of enforcement tools. In each jurisdiction in our study the enforcement toolbox had grown considerably over the past 10 to 15 years. Rent repayment orders, civil penalties, rent stopping orders, fixed penalty notices, along with the ability to charge for traditional enforcement notices, have been designed as alternatives to prosecution. Each jurisdiction now follows a different path regarding the availability and use of these measures and has a different approach on deterrence from traditional criminal law.

A number of authorities and Rent Smart Wales successfully apply civil penalties and rent penalty notices respectively as part of a responsive approach underpinned by a robust enforcement policy. Civil penalties are applied when softer, more informal enforcement activities have not been successful and the situation progresses to the next tier of the regulatory pyramid. A further escalation to criminal prosecution is relatively rare, which indicates its effectiveness of civil penalties in achieving compliance.

Enforcement strategies generally require political “buy-in”. For example, in one of our case studies in England, the authority decided not to use civil penalties because of concerns among local councillors that this would affect a landlord's business. This was, of course, the point of making substantial financial penalties available. Hence, local policymakers in this case study are rejecting the premise upon which the policy is based. This kind of rationale at local level reflects a belief that the local authority should have a limited or residual role, as was the case among those adopting a light-touch approach. Our findings however indicate that elsewhere civil penalties can be effective when used as part of a responsive regulatory approach and underpinned by a robust enforcement strategy: the size of the potential penalties – precisely because they were big enough to affect the landlord's business – was seen as contributing to their effectiveness in bringing landlords to compliance.

The biggest stick: criminal prosecution

Our findings suggest that the threat of further action helps to make civil penalties an effective tool, with landlords being made aware that they should expect further escalation to prosecution if they do not co-operate. Case studies reported that in such cases landlords would usually work with the local authority to avoid a criminal record.

The compliance literature also suggests that the effectiveness of pyramidal approaches will be affected by the level of punitiveness to which an agency can escalate their response.¹⁸³ Even if rarely used, the severity of the sanction at the tip of the pyramid figures as an effective deterrent and signals meaningful escalation is possible. Our case studies reported that, although it was very rare, sometimes the response needed to be escalated further to criminal prosecution. Reinforcing the findings from the 2018 MHCLG select committee report, our participants felt that civil penalties were not severe enough to deter the worst of offenders. Criminal prosecution remains an important tool for local authorities.¹⁸⁴

¹⁸² Ayres and Braithwaite, *Responsive regulation*

¹⁸³ Ayres and Braithwaite, *Responsive regulation*

¹⁸⁴ Housing, Communities and Local Government Committee (MHCLG) (2018) *Private rented sector: Fourth Report of Session 2017-19*

Our research however suggests that both the regulatory efforts of local authorities and the effective responsive regulation in the PRS are seriously undermined by the low fines and other sentences issued by the courts and tribunals. Even for cases where prosecutions were successful, stories were shared by numerous participants about low levels of fines for apparently egregious offences and successful defences which, on the face of it, appeared “creative”. If governments are to promote effective responsive approaches, then the “biggest stick” needs to be significantly bigger than is currently the case.

The law as it currently stands makes it extremely difficult for trading standards in England successfully to use responsive approaches in their regulation of the PRS. Penalty charge notices can only be served against the legal entity which owns the business, which in most instances is a limited company. If/when the local authority is successful in levying the civil penalty, which the legislation indicates is the standard course of action for a first offence, the agency will simply dissolve and restart under a different name. The local authority must then begin the whole process again. Consequently, it is extremely difficult for trading standards to apply an escalated response.

A range of enforcement tools

For responsive regulation to be effective, the local authority needs to have access to a range of informal and formal sanctions. A smarter approach to enforcement is one where the local authority’s toolkit contains a range of approaches to drive improvements in the sector.

Legal transplants between devolved governments are generally hazardous since they do not account for local culture and differentiation. In addition, in Northern Ireland and Scotland the law has developed from a different base than is the case for Westminster, and we should be wary of simplistic transfers of laws. However, both the use of fixed penalty notices for lower level offences in Wales and the implementation of the civil penalty regime in England suggest fresh thinking that allows adaptation across jurisdictions.

Publicising civil penalties

A new theme identified in our research is a general reluctance on the part of authorities in England to publicise the use of civil penalties because of concerns that landlords will see these types of financial penalties as bureaucratic self-serving behaviour and as levied by authorities simply to raise revenue. Publicity of such activities can, however, be approached in a number of ways, such as for instance by demonstrating its effect on landlord behaviour (e.g., a bad landlord exiting the sector). As explored above, demonstrating the outcomes and impacts of the enforcement regime is key in building effective relationships with the sector, and publicity about such activities may therefore still be desirable. Our online research identified one example of this taking place on an anonymous basis.¹⁸⁵

A tenant-focused approach

The goal of local authorities in regulating standards in the sector is to ensure that tenants have a healthy and safe home; a goal recognised even in areas with the most *light-touch* enforcement strategies. However, there is a sense in which tenant behaviour is also seen as problematic, such as when considering motivations for complaining to the authority and decisions on whether to proceed with complaints.

¹⁸⁵ <https://www.lettingagenttoday.co.uk/breaking-news/2020/1/huge-18-000-penalty-for-landlord-who-failed-to-improve-property>

We were told that, on the one hand, tenants often complain about standards because they are looking for something better (usually social housing). It is reasonable to assume that this behaviour is associated with feelings of precarity and insecurity, which research has shown to be associated with renting privately, particularly among lower-income households.¹⁸⁶ On the other hand, we were told that tenants would often not pursue a complaint because of concerns about retaliatory eviction by their landlords or would simply move property to escape the problem if they had that choice. Enforcement action will usually rely on a complainant who is willing to give evidence so a decision not to pursue a complaint will have a significant impact upon a local authority's enforcement activity.

Local authorities were also aware that many tenants do not make complaints for a number of reasons: they might not be aware of the local authority's role in enforcement; they might have vulnerabilities or otherwise be exploited by a landlord - in, for example, cases of modern slavery; or they could be afraid of the authority, which is particularly prevalent among certain migrant communities.

There is (rightly) much discussion about the ways in which local authorities can engage with landlords and letting agents. There is less discussion about ways of engaging with tenants, with very few local authorities seeking to address the above issues in any kind of systematic or structured way. In contrast, among those which adopted *creative approaches* to enforcement, supporting tenants was the key focus of their activities. Their strategies illustrate options to focus on tenant vulnerabilities, with their approach extending far beyond a focus on property standards.

Across the UK, the advice and support needs of tenants may be addressed via policy areas such as health and social care, anti-poverty strategies, or debt reduction. Additionally, a wide array of voluntary sector organisations provide advice and support for tenants. However, as emphasised in a recent report by Shelter, strategic partnerships in respect of the private rented sector are usually underdeveloped and, in the UK, there is no single policy framework in place that addresses the advice and support needs of private renters.¹⁸⁷ Creative authorities demonstrate the benefits of building strategic collaborations with a wide array of services in order to meet the advice and support needs of renters by, for example, effective signposting or referral processes. Where they do exist, specialist housing advice services can provide advice and support for private renters who are vulnerable or have more complex issues and needs. Local authorities have a key role to play in improving pathways to access these services, which may in turn help prevent homelessness among private renters.

Recommendations for local authorities

All local authorities in the UK should develop more detailed PRS strategies.

- When formulating their strategy, local authorities should adopt an overarching goal, clear aims and objectives, and an explicit definition of the problem they are aiming to address.
- Local authorities should integrate and, wherever possible, co-locate landlord registration alongside other housing services.
- Local strategies need to reflect the needs of private renters and consider the specific issues experienced by vulnerable tenants.
- Local authority enforcement teams should aim to build strategic collaborations with a range of internal and external partners to assist in the identification of poor property conditions and in signposting tenants to the needed support.

¹⁸⁶ K. McKee, A.M. Soaita and J. Hoolachan (2019) 'Generation rent' and the emotions of private renting: self-worth, status and insecurity amongst low-income renters', Housing Studies

¹⁸⁷ Shelter Scotland, *Where to Turn*

Local authorities should aim to improve the ways in which positive outcomes are defined, recorded and communicated to the wider sector.

- Local authorities should move away from an output-focused approach and communicate success in terms of outcomes achieved.
- Local authorities should report on cases resolved both by informal and by formal action.
- Wherever possible, the impact of compliance-focused activities should be evaluated.
- Outcomes of enforcement activity should be regularly communicated to landlords and letting agents as part of building a positive relationship with the sector.

Strategies that are entirely based on either compliance or deterrence-focused activities are unlikely to be effective in a PRS context. UK local authorities should aim to combine both approaches.

- Local authorities should provide a range of compliance-focused activities as part of their overarching strategic approach. This could include, for example, training sessions, a dedicated advice service, landlord forums, online information and regular newsletters.
- In Scotland local authorities should use the national registration scheme to communicate with and upskill the sector.
- Rural local authorities should learn from the experience of COVID-19 to explore how digital technologies can be used to share advice and information with the sector.
- Compliance-focused activities must operate in the shadow of the law, with formal enforcement offered as a viable alternative.
- Pyramidic or responsive approaches to enforcement (where adopted) should be part of the enforcement strategy and clearly communicated to the sector.

Recommendation for Governments

UK and devolved governments should improve the advice and guidance available to UK local authorities on regulating the PRS. This should include advice on:

- Multi-agency working and building effective partnerships with public services and external partners. The focus of these activities should be to identify poor conditions, target enforcement activity, and provide tenants with needed support.
- Processes to integrate services or coordinate operations where co-location or the creation of new organisational forms is not a realistic objective.
- In England, consideration should be given to the issues faced by two-tier local authorities with responsibilities across those authorities.

UK and devolved governments should improve the data available to local authorities on the PRS.

- In England, a national registration system of all landlords as well as letting agents should be introduced.
- National schemes of registration or licensing should have clear aims and purpose.
- The Northern Ireland Assembly should consider whether the national registration scheme as currently configured is fit for purpose. Current data sharing restrictions are significantly limiting its usefulness as a means of targeting enforcement and communicating with the sector at a local level.

Given the significance of the regulatory role played, and of the private rented sector itself, UK and devolved governments should re-consider their approaches to resource allocation to local authorities.

- Local authorities should receive, and allocate, adequate funding to develop appropriate and effective responses to the changing nature and context of the PRS.
- Funding programmes need to build in sustainable longer-term goals, as opposed to short-term sticking plasters.

UK and devolved governments should consider technical amendments to the existing suite of legislation, as well as codification of the diverse legislative provisions which currently exist.

- The various provisions regarding the regulation of the PRS are found in diverse locations of primary and secondary legislation, with statutory guidance. Codification is good practice, particularly bearing in mind the needs of the landlord community.
- Clearer sentencing guidelines need to be provided to criminal courts to ensure that punishment is proportionate to the nature of the offence.
- Trading standards should be entitled to serve civil penalties against the company directors who are the controlling figures behind the company form.
- Data sharing between local authorities and other agencies such as Universal Credit, that hold data that would facilitate more effective enforcement should be enabled.

